Zero Corporation, Zero East Division *and* International Union of Electrical, Radio and Machine Workers, AFL-CIO-CLC. Cases 1-CA-16142, 1-CA-16183, 1-CA-16536, 1-CA-16806, and 1-RC-16391

June 29, 1982

DECISION AND ORDER*

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

On January 15, 1981, Administrative Law Judge George F. McInerny issued the attached Decision in this proceeding. Thereafter, Respondent, the General Counsel, and the Charging Party filed exceptions and supporting briefs,[1] and Respondent filed an answering brief in response to the exceptions of the General Counsel and the Charging Party.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[2] and conclusions[3] of the Administrative Law Judge only to the extent consistent herewith.

The Administrative Law Judge found that Respondent committed numerous violations of Section 8(a)(1) and (3) in the face of the Union's organizing campaign among its employees. These violations included an invalid no-solicitation rule, interrogations creating the impression of surveillance, threats of plant closure, promises of benefits if the employees rejected the Union, and threats of loss of benefits if the employees selected the Union. We agree with the Administrative Law Judge's conclusions concerning these violations. We also agree, for the reasons stated below, with the General Counsel and the Charging Party's contentions that the Administrative Law Judge erred in dismissing allegations that Respondent committed additional violations of Section 8(a)(1). We further agree with the General Counsel and the Charging Party that the Administrative Law Judge erroneously found that the General Counsel did not establish the Union's majority status as of June 17, 1979,[4] and thus that he also erroneously failed to issue a bargaining order in the proceeding.

A. *Additional 8(a)(1) Violations*

The following discussion is based upon the Administrative Law Judge's findings of fact with which we find no fault.

1. After the religious services, Respondent's general manager, Bill Wood, walked over to employee Waite in the parking lot of the church where they were both members, and commented that he was surprised that Waite's fellow employees, Villamaino and Frew, were so prounion. Waite replied that he did not know what was going on. The conversation then turned to church matters.

The Administrative Law Judge found that Wood's statement "was merely a passing remark preliminary to the real purpose of the conversation, which was to discuss a project which would benefit the church" and thus did not create the impression of surveillance as alleged by the General Counsel. Wood's statement conveyed the message that Respondent knew the leading union organizers. The Administrative Law Judge found that Wood was involved in a number of incidents showing a pattern of conduct designed to discover the identity of union supporters, to estimate the strength of the movement, and to give employees the impression that their activities were known to management. Wood's comment to Waite falls within this pattern. That the comment was made off the worksite and was followed by remarks on unrelated matters does not remove it from the overall context of Respondent's unlawful conduct.[5]

2. General Manager Wood told employee McLean, with whom he had never before conversed, that he knew McLean was a union organiz-

*On August 19, 1982, the Board granted the General Counsel's motion to modify the Decision and Order by including provisions that would make whole any employees who had been disciplined or had suffered any losses by reason of Respondent's application of the absenteeism/tardiness policy it established on September 14, 1979, which the Board found violated Sec. 8(a)(5) of the Act. The Amended Remedy, Order, and notice herein appear as so modified.

[1] The Charging Party excepts to the Administrative Law Judge's failure to order an award of organizing costs it incurred after June 17, 1979, as a result of Respondent's unlawful conduct. We find that the facts in this case do not warrant such a remedy.

[2] The General Counsel, the Charging Party, and Respondent have excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). In this regard, we find it unnecessary to determine whether the Administrative Law Judge erred in finding that General Manager Wood, had he testified, would not have testified adversely to the interests of Respondent, as a contrary finding would not affect our conclusions herein.

[3] The Administrative Law Judge properly found that on May 25, 1979, Supervisor Lesniak violated Sec. 8(a)(1) of the Act by questioning employee Villamaino about the identity of the Union and its organizing prospects among Respondent's employees. He further found that Lesniak posed similar questions to Villamaino on May 30; however, he failed to make any conclusions concerning the lawfulness of these latter questions. For the reasons the Administrative Law Judge found the May 25 questions to be unlawful, we find the May 30 questions to be a violation of Sec. 8(a)(1) of the Act.

[4] All dates herein are in 1979 unless otherwise specified.

[5] See, e.g., *Quemetco, Inc., a subsidiary of RSR Corporation*, 223 NLRB 470 (1976); *Crown Zellerbach Corporation*, 225 NLRB 911 (1976).

er and that he thought it would be detrimental to have a union at Zero. McLean admitted that he had gripes and he had gone to a few union meetings to hear what the Union had to say. Wood asked McLean what his gripes were. McLean replied that insurance payments were too high and that he objected to the difference in vacation benefits between office and shop employees. Wood then repeated that it would be detrimental to have a union at Zero, adding that big companies dealing with Respondent were happy to learn that it was nonunion.

The Administrative Law Judge found, and we agree, that Wood's declaration that McLean was a union organizer unlawfully created the impression that McLean's activities were under surveillance. However, we disagree with his conclusion that Wood's remarks in their entirety did not constitute an illegal threat and solicitation of grievances. Wood first told McLean that it would be detrimental to have a union on the heels of his unlawful statement creating the impression that he knew about McLean's union activities, and then repeated the admonition that a union would be detrimental after he heard McLean's complaints about insurance and vacation benefits. This last admonition was coupled with the observation that Respondent's big customers were happy that Respondent was nonunion. Contrary to the Administrative Law Judge, we find that the implications of these statements are very clear: The union would be a detriment to employees' aspiring for better working conditions and could result in a loss of business for Respondent with economic consequences for the employees.

We find it equally clear that, by asking about McLean's complaints and afterwards repeating that a union would be detrimental, Wood both solicited grievances with the implication that the Company would remedy the complaints and indicated that selection of the Union would only worsen the situation.[6] Accordingly, we find that Wood's remarks to McLean contained both threats of a loss of benefits in retaliation for unionization and the solicitation of grievances, thus violating Section 8(a)(1) of the Act.

3. Manager of Manufacturing Hayes told employee Corbin that he was surprised that she was participating in the Union. Then, apparently in reference to some previous work problem, Hayes told Corbin that he thought her problem had been solved and if she had any problems to come to his office, that his door was open at any time. The Administrative Law Judge properly found that Hayes' first remark gave the impression that Corbin's union activities were under surveillance in violation of Section 8(a)(1). However, he neglected to make any findings with regard to the General Counsel's allegation that Hayes' second remark, that his door was open at any time to handle Corbin's problems, constituted an unlawful solicitation of grievances. We agree with the General Counsel's contention that the remarks about problems, taken in context with Hayes' comment about Corbin's union activities, encouraged Corbin to set forth her grievances to him and implied that he would solve them. Such conduct constitutes a solicitation of grievances in violation of Section 8(a)(1) of the Act.

4. Hayes asked employee Dupont what he expected to get out of the Union and said that he knew Dupont was at the "Vote No" meeting on the previous Friday and had been critical of Respondent. The Administrative Law Judge found nothing unlawful in Hayes' remarks which were "frank and open and free from coercion." We disagree. Such probing of employees' motives is coercive even in the absence of threats of reprisals for it makes clear an employer's displeasure with its employees' union activities and thereby discourages such activity in the future.[7]

5. Production Manager Curtis told employee Corbin that he had seen her car parked at the Masonic Temple. (Union meetings were held at the Temple.) Curtis added that he thought her problem was over, and if Corbin had any problems to come around and talk to him. Corbin admitted that her car was parked at the Temple and would be parked there any time a union meeting was held at the Temple. Curtis responded that there were many more cars but Corbin's car was the only one he recognized.

The Administrative Law Judge found "there is no evidence that Curtis' observation of Corbin's car was anything but a coincidence" and concluded that Curtis' remarks were not unlawful. We disagree. Although it might have been coincidence that Curtis was driving by the Masonic Temple on the occasion in question, there was nothing coincidental about his telling Corbin that he saw her car. By so doing he unmistakenly conveyed the impression that Corbin's union activities were under surveillance and thus violated Section 8(a)(1). Further, Curtis mentioned Corbin's "problem" and invited her to come around and talk to him immediately after the remark about seeing her car. In this context, we are compelled to conclude that Curtis linked Corbin's presence at the union meeting with her work problems and attempted to discourage

[6] See *Fred Jones Manufacturing Company*, 239 NLRB 54 (1978).

[7] See *PPG Industries, Inc., Lexington Plant, Fiber Glass Division*, 251 NLRB 1146 (1980).

her union activities by soliciting her grievances, noting that her previous problem had been solved and implying that future problems would be solved if she talked to him. Such conduct constitutes a violation of Section 8(a)(1) of the Act.[8]

6. The day after the representation election, Production Manager Curtis admonished employee Reynolds for the Union's decision to file objections to the election. Curtis mentioned that he had heard that Reynolds had made an impassioned speech at the union meeting in favor of filing objections. Curtis then claimed that by filing the objections the employees were holding up any progress the Company may have planned from the time the union campaign started. Production Manager Dryjowicz and General Manager Hess also made similar remarks about the Union's filing of objections. Dryjowicz telephoned employee Villamaino and told him that he knew Villamaino had tried "to make things better here" but warned that "if objections were filed everything was going to be frozen and a lot of things Zero wanted to do to help the employees could not be done." Hess asked what Villamaino thought he could accomplish by filing objections to the election, adding that he was surprised that Zero East had no job descriptions or classifications and that he wanted to do these things, but if the Union had objections pending the only things that Zero could do would be things they normally did. Finally, Curtis remarked to employee Fraschini after the election that Hess had good ideas and plans for the Company, and that "you guys are really screwing things up—like $50 per month."

The Administrative Law Judge found that the foregoing conversations did not convey unlawful threats to withhold benefits because objections were filed or promise unlawful benefits if the objections were withdrawn. Rather, the Administrative Law Judge found that these conversations simply resulted from Respondent's frustration at being unable to "redeem its promise [of wage increases and other benefits] when the election campaign at Zero East ended with the defeat of the Union."

Contrary to the Administrative Law Judge we find that these four conversations violated Section 8(a)(1). No doubt Respondent was frustrated at the filing of objections. As correctly noted by the Administrative Law Judge, Respondent repeatedly made unlawful promises of wage increases and other benefits and to retain credibility with its employees would have been required to fulfill some of those promises. However, Respondent's remarks about the Union's filing of objections assigned blame to the Union for Respondent's failure to provide the benefits it unlawfully promised the Zero East employees if the Union were defeated. By so doing Respondent again conveyed the message to employees that union activity results in a loss or delay of benefits.[9]

7. After the representation election, Karen Mankus, Respondent's personnel representative, admonished employee Reynolds for his argument with Production Manager Curtis concerning the Union's objections to the election. Reynolds admitted that his earlier conversation with Curtis had been too acrimonious; however, he said that six or seven employees had accused him of being the cause of "their promises from the Company being held up." Mankus replied that Reynolds was under pressure, Curtis was under pressure, she was under pressure, and that Respondent intended to keep up the pressure until the objections to the election were withdrawn.

The Administrative Law Judge found nothing unlawful in the statement that the Company was going to keep up pressure until the objections were withdrawn because no pressures were specified. We disagree.

As found above, Respondent's strategy to discourage union activity and to diminish the Union's influence at Zero East included blaming the Union for preventing employees from receiving benefits promised during the election campaign by filing objections to the election. The success of the strategy is demonstrated by the accusations employees made against Reynolds. Accordingly, we find that Mankus' assertion that Respondent would keep up the pressure is an additional violation of Section 8(a)(1).

8. After the objections to the election had been filed by the Union, General Manager Hess and employee Waite got into an argument concerning the extent of the benefits given the employees in Respondent's California plant, Waite claiming that they were misrepresented by Respondent. The California benefits had been a major issue in the election campaign. Hess insisted that Waite get on the intercom at the plant and admit that he lied when he said that Respondent had been quilty of misrepresentation. Waite refused.

The Administrative Law Judge found that Respondent's representatives had, as Waite alleged, stated that the California benefits were somewhat higher than they actually were. Yet he found Respondent's directive to Waite was not unlawful be-

[8] See *Hendrix Manufacturing Company, Inc.*, 139 NLRB 397 (1962).

[9] The Charging Party excepts to the Administrative Law Judge's failure to find that these conversations also violated Sec. 8(a)(4) of the Act. We find it unnecessary to pass on this exception, as the remedy is the same under either violation finding.

cause it did not contain any threat or coercion. Again, we disagree. There can be no question that a directive to speak to all employees on the plant's intercom system is an act of coercion. That it is unlawful coercion is eminently clear from the facts that Waite was directed to speak about the matter which was at issue in the Union's pending objections, and that Waite was ordered to admit he lied about Respondent's description of the benefits at its California facility when Waite apparently had not lied. Accordingly, we find that Hess' directive to Waite was a violation of Section 8(a)(1) of the Act.

9. Supervisor Chris Sobel asked employee Woodman, who wore a union button to work, if he was a union organizer. Woodman answered that he was a member of the organizing committee.[10] Sobel then said that in his opinion unions were bad, and that he had been meeting with Hess who he believed was a fair person, who was trying to establish wage scales. Sobel then asked Woodman his opinion of unions. Woodman replied that unions could bring about financial gains, better retirement, and resolution of difficulties. Sobel then talked about Woodman's future with the Company and said he could get a special review for Woodman. While the Administrative Law Judge found that Sobel's promise of a special review for Woodman violated Section 8(a)(1) of the Act, he found that Sobel's statement that unions were bad coupled with his reference to Hess' interest in establishing wage scales were merely expressions of opinion and did not imply a promise of benefit. The Charging Party excepts to this finding. We agree with the Charging Party.

Sobel's references to Hess' interest in establishing wage scales in juxtaposition with Sobel's declaration that unions were bad made clear that only if there were no union would there be such wage classifications. This, especially since it occurred in the context of the obvious promise of benefit concerning the special review, implied the promise that wage scales would be established if the employees rejected representation. Such a promise violates Section 8(a)(1) of the Act.

10. Production Control Manager Fred Goodrich noticed employee Woodman's name on a union leaflet and asked Woodman if he knew how other employees felt about the Union. Woodman said that in his limited discussion with other employees he had found that they were concerned with money, insurance, retirement plans, and unfair hiring and firing practices. They then began talking about Woodman's employment goals. Woodman said he wanted to become a coordinator in the department in which he worked. Goodrich responded by stating that they were on different sides of the fence on the union issue. He said that Woodman would have to decide, before he established his goal, whether he wanted to be a part of society or a radical. Woodman asked him to define "radical" but he would not.

The Administrative Law Judge found nothing unlawful in this conversation. In this regard he found that Goodrich's questioning of Woodman as to other employees' union sentiments did not exceed the bounds of protected free speech inasmuch as Woodman was an open union adherent and the employees' sentiments were quite public by the time the remark was made. He further found that Goodrich's statement that Woodman would have to decide whether he wanted to be part of society or a radical before establishing his goals with the Company was subject to several interpretations and therefore could not be found unlawful. Thus, the term "radical" could have referred to union activities, to Woodman's shoulder-length hair and mustache, or to his trouble with the police which he had confided to Goodrich.

The Charging Party excepts to the Administrative Law Judge's analysis of Goodrich's remarks. We find merit in these exceptions. First, as noted earlier, an employee's open support for a union does not render lawful an otherwise unlawful interrogation about other employees' union sympathies. This form of interrogation indicates the employer's displeasure with union activity and thereby discourages such activity in the future.[11] Second, the meaning of Goodrich's comment concerning Woodman being a radical is not ambiguous when viewed in the context of the full exchange of remarks between Goodrich and Woodman. The conversation began with a discussion of why employees wanted union representation. When the conversation shifted to Woodman's employment goals and his desire to become a department coordinator, Goodrich responded that he and Woodman were on different sides of the fence on the union issue. Thus, Goodrich interjected union considerations into the discussion of Woodman's goals. Immediately thereafter, Goodrich told Woodman he would have to decide whether he wanted to be a radical or a part of society before he established his goals. The implication was clear: Woodman's goals would be achieved only if he opted for Goodrich's side of the fence on the union issue and ceased to be a "radical"; i.e., a union supporter. That this was Goodrich's meaning is underscored by his refusal to define "radical." We therefore find that

[10] Previously, the Union distributed a leaflet listing Woodman as a member of the organizing committee.

[11] *PPG Industries, Inc.*, 251 NLRB 1146.

Goodrich's remarks contained an interrogation concerning employees' union sentiments and a threat that Woodman would not achieve his employment goals if he continued to support the Union, all in violation of Section 8(a)(1) of the Act.

B. *The 8(a)(5) Violation*

The General Counsel alleges and Respondent admits that the following employees constitute a unit appropriate for the purpose of collective bargaining:

> All full-time and regular part-time production and maintenance employees including production control coordinators, expeditors, power plant employees, employed at Respondent's facility in Monson, Massachusetts, but excluding all office clerical employees, production planners, estimators, guards and supervisors as defined in the Act.

There are 340 employees in this unit. By letter dated May 30, 1979, the Union demanded that Respondent recognize it as the exclusive bargaining representative of the employees in said unit. On the same date, the Union filed a representation petition with the Board. The General Counsel introduced into evidence 188 authorization cards as proof that the Union represented a majority of employees as of June 17, 1979,[12] and alleged that Respondent's unfair labor practices require the issuance of a bargaining order under the rationale of *N.L.R.B.* v. *Gissel Packing Co., Inc.*, 395 U.S. 575 (1969).

The Administrative Law Judge did not reach the issue of the impact of Respondent's unfair labor practices because he concluded that the General Counsel failed to demonstrate that the Union had ever achieved majority status. The General Counsel and the Charging Party except to the Administrative Law Judge's conclusion. We find merit in these exceptions.

One hundred and eighty-eight cards were authenticated by a handwriting expert based upon a comparison of the signatures on the cards with those on the employees' W-4 forms. At the hearing, Respondent refused to stipulate to the handwriting expert's qualifications but did not object to the authenticity or validity of the cards. Based upon a reexamination of the cards, Respondent asserted in its brief to the Administrative Law Judge that a large proportion of the cards were defective (and thus invalid) because the dates on the cards were not filled in by the signers. The Administrative Law Judge affirmed Respondent's assertion with respect to 60 authorization cards. He noted that the handwriting expert authenticated only the signatures and not the dates on the cards. He further noted that 60 cards were dated by persons other than the signer, and, of these, 38 were in the same hand and pen which was not that of one of the signers. He found that, although there was testimony that cards were solicited in the plant during May and June and that the cards were date-stamped by the Regional Office during the month of June, there was insufficient evidence as to when the cards were actually signed. On these grounds, the Administrative Law Judge concluded that the General Counsel failed to meet the burden of proof in authenticating the cards.

We disagree with the Administrative Law Judge's analysis. The Board has held that, should a card's authenticity be in issue, the moving party may clarify its position and expand the record with respect to the card's admissibility by asking questions in *voir dire*. The failure to object to the admission of a card into evidence waives the right to question its authenticity at a later time.[13] Here, Respondent refused to stipulate to the qualifications of the handwriting expert who authenticated the cards. However, it did not cross-examine her about the dates on the cards or in any other way challenge her authentication of the cards. Nor did it object to the admission of the cards into evidence. Instead, Respondent's first question concerning the dates was raised in its post-hearing brief to the Administrative Law Judge. In these circumstances, we find that Respondent waived its right to question the authenticity of the cards. To hold otherwise, as did the Administrative Law Judge, is effectively to prevent the General Counsel from responding to attacks upon authenticity about which he received no notice.

Further, we find that the General Counsel sustained his burden of proof concerning the cards. The Board has held that dates that appear on authorization cards are presumed valid.[14] Here, the signatures on the cards were properly authenticated, all the cards were dated, and there is no evidence to show that the cards were actually signed on a different date from that appearing on them. That the dates and the signatures display different handwriting is, without more, insufficient to overcome the presumption that the cards were signed on the date appearing on them. It is not uncommon for employees to sign cards which have been dated by another person, often the card solicitor.[15] Fur-

[12] A 189th card was authenticated by employee Villamaino during his testimony. His card is dated March 4, 1979, was the first card signed by a unit employee, and is counted as evidence that the Union achieved majority status.

[13] *Montgomery Ward & Co.*, 253 NLRB 196 (1980).

[14] See, e.g., *Jasta Manufacturing Company, Inc.*, 246 NLRB 48 (1979).

[15] *Gordonsville Industries, Inc.*, 252 NLRB 563 (1980); *Jasta Manufacturing Company, Inc., supra.*

ther, there was evidence that cards were solicited at Respondent's plant during the months of May and June.[16] Accordingly, in the absence of evidence that the cards were not signed on the dates appearing on them,[17] and in view of Respondent's failure to raise the question concerning the dates at the hearing, we find the General Counsel has established the authenticity of the cards. In view of this finding, we further conclude that the Union successfully solicited authorization cards from a majority of employees at least as of June 17, 1979.[18]

In *N.L.R.B.* v. *Gissel Packing Co., Inc.*, 395 U.S. 575 (1969), the Supreme Court approved the use of authorization cards as an indication of employee sentiment, and further approved reliance upon such cards as a basis for a bargaining order where there is "a showing that at one point the union had a majority" and the employer has engaged in unfair labor practices which "have a tendency to undermine majority strength and impede the election processes." 395 U.S. at 614. The General Counsel and the Charging Party urge us to find that Respondent's unfair labor practices in this case warrant the issuance of such a bargaining order. We so find.

From the inception of the Union's campaign, Respondent engaged in numerous far-reaching unfair labor practices. Between May 29 and June 4, Respondent engaged in numerous interrogations of its employees seeking information concerning their union activities while often giving the impression that Respondent had these activities under surveillance. Respondent also solicited employees to reveal the causes of any discontent caused by the job or working conditions and threats were made that should the Union win the election Respondent would close its plant. On June 20, 1979, Respondent distributed a letter among its employees referring to an election which had taken place at its Zero-West plant in which the Zero-West employees had "soundly rejected" an organizing attempt by the Machinists Union. The letter asserted that

> [e]ven more important than the election victory itself is what Zero management did immediately after the election was over. Zero-West made changes in the health insurance plan, certain job classification and pay ranges and other problem areas brought to light in the pre-election period, all in less than five days after the union was defeated. This proves *Zero* listens.

The Administrative Law Judge found that after June 20 the benefit package granted to the Zero-West employees after their union election in June was the *leitmotif* of the Company's campaign at Zero East. Sometime in July, Respondent imported Jack Frickel, a supervisor from the Zero-West plant, to "orchestrate" that theme. Ostensibly Frickel came to Zero East to assist in its business machine division but, as the Administrative Law Judge found, it is clear that the real reason for Frickel's presence at Zero East was to bear witness that Respondent did indeed reward the Zero-West employees for defeating the Union. Frickel circulated among the employees, soliciting grievances, emphasizing Respondent's and his personal opposition to having a union, and constantly describing the benefits that could be gained if the Union were defeated. In a more formal guise, Frickel appeared with General Manager Hess at a series of meetings held for the purpose of answering employees' questions. In response to questions concerning employment conditions at Zero-West, Frickel reiterated to large groups of employees that everybody at Zero-West had received a $50-per-month fuel allotment, the insurance premium was cut about $4, wages were increased by 50 cents an hour, and in addition there was job reclassification and review which in most cases would probably result in another wage increase. And it all happened, as Frickel made clear to the Zero East unit employees, after the Union was voted out. Thus, the message to such employees was crystal clear—reject the Union and similar benefits would be forthcoming to them.

In all, Respondent committed some 50 separate violations of the Act. Many of these violations such as the promise of benefits in the event the Union lost directly affected every employee in the unit. This pervasive misconduct created an atmosphere hostile to the Union and its adherents and was clearly intended to dissipate the Union's majority status among the employees. Indeed, in promising the unit employees benefits Respondent made sure to impress upon them that their West Coast counterparts had been amply rewarded for

[16] As noted in fn. 12, Villamaino was the first employee to sign a card for the Union. Thus, there can be no doubt that the cards bearing the monthly dates of either May or June were signed in 1979.

[17] *Fort Smith Outerwear, Inc., H. L. Friedlen Company*, 205 NLRB 592 (1973).

[18] We note that the Administrative Law Judge found that, if he accepted the dates on the cards (as we have now done), 173 cards were signed by May 30, the date of demand for recognition by the Union. However, our examination of the cards reveals that, as of May 30, 171 unit employees had signed union cards. Thus, the Union had established majority status as early as May 30, although the General Counsel alleges such status was achieved on June 17. Apparently, the General Counsel selected June 17 as the operative date for determining majority status because on that date the parties stipulated at the conference in the representation matter to the appropriateness of the unit, and Respondent submitted a list of 340 eligible unit employees. As of June 17, the evidence shows that 189 employees had signed cards for the Union. Thus, on both May 30 and June 17, and at all times between, the Union enjoyed majority status.

defeating the union attempting to organize them, and that Respondent was similarly ready to reward the Zero East employees if they rejected the Union herein. We believe that the lingering effect of such unlawful promises and the other incidents of unlawful conduct cannot be dispelled by our traditional remedies. Accordingly, we find that "employee sentiment, once expressed through cards, would, on balance, be better protected by a bargaining order."[19]

The Union made its demand for recognition on May 30, and, as noted earlier, the evidence establishes that the Union enjoyed majority status on that date. Nevertheless, the General Counsel alleges that the Union achieved majority status on June 17. The evidence also establishes that the Union did indeed have such status on that date as well. Inasmuch as all of Respondent's unfair labor practices occurring prior to June 17 are otherwise individually remedied, we conclude that Respondent is required to recognize and bargain, upon request, with the Union as of June 17 as alleged by the General Counsel.[20]

Further, the General Counsel alleges and Respondent admits that since on or about September 14, 1979, Respondent unilaterally established and implemented a new absenteeism/tardiness policy. As Respondent was under an obligation to bargain with the Union as of June 17, we find its unilateral establishment of a new absenteeism/tardiness policy to be a separate violation of Section 8(a)(5) of the Act.

AMENDED CONCLUSIONS OF LAW

In accord with our above findings, we adopt the Administrative Law Judge's Conclusion of Law with the following modifications:

Substitute the following after Conclusion of Law 13:

"14. By threatening to withhold benefits if the Union did not withdraw its objections to the representation election, Respondent has violated Section 8(a)(1) of the Act.

"15. By directing an employee publicly to support Respondent's position on an election campaign issue, Respondent has violated Section 8(a)(1) of the Act.

"16. Respondent's illegal activities set forth, *supra*, have interfered with and affected the results of the Board election held on August 23, 1979.

"17. All full-time and regular part-time production and maintenance employees including production control coordinators, expeditors, power plant employees, employed at Respondent's facility in Monson, Massachusetts, but excluding all office clerical employees, production planners, estimators, guards and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of the Act.

"18. On or about May 30 and June 17, 1979, and at all material times herein, the Union represented a majority of the employees in the above appropriate unit, and has been the exclusive representative of all said employees for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

"19. By refusing since June 17, 1979, to recognize and bargain with the Union as the exclusive representative of its employees in the appropriate unit set out above, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

"20. By unilaterally establishing a new absenteeism/tardiness policy, Respondent instituted unilateral changes in the wages, hours, and terms and conditions of employment of unit employees in violation of Section 8(a)(5) of the Act.

"21. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

"22. Respondent has not violated the Act in any other manner."

AMENDED REMEDY

We adopt the Administrative Law Judge's remedy with respect to his 8(a)(1) and (3) findings. In addition, having found that Respondent engaged in unfair labor practices in violation of Section 8(a)(5) we shall order it to cease and desist therefrom and to take certain affirmative action to effectuate the Act.

Accordingly, Respondent shall be ordered to rescind the absenteeism/tardiness policy unilaterally established on September 14, 1979, to expunge from any employee personnel files or other records all references to suspensions, discharges, and other discipline issued pursuant to said policy, and to

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[19] *N.L.R.B.* v. *Gissel Packing Co., Inc.*, *supra* at 614–615. See also *Shop-Rite Supermarket, Inc.*, 231 NLRB 500 (1977); *First Lakewood Associates, Inc., et al.*, 231 NLRB 463 (1977); and *K & K Gourmet Meats, Inc.*, 245 NLRB 1331 (1979).

In view of this finding, we conclude that, contrary to the Administrative Law Judge, Respondent demonstrated a general disregard for the employees' fundamental rights. Accordingly, we substitute in our Order broad cease-and-desist language for the narrow language employed by the Administrative Law Judge in his recommended Order. See *Hickmott Foods, Inc.*, 242 NLRB 1357 (1979).

[20] *Trading Port, Inc.*, 219 NLRB 298 (1975). We have fixed the bargaining obligation as of June 17 not only because it makes no practical difference whether we use that date or May 30 under the circumstances, but because June 17 is the date on which Respondent was given notice in the complaint and throughout the hearing as the one on which the General Counsel was relying. In using that date, we find that the Union's May 30 demand for recognition and bargaining was a continuing demand which at no time was withdrawn or abandoned, and that between May 30 and June 17, as noted, the Union at all times could show that a majority of the employees in the unit had signed authorization cards for it.

fully restore to *status quo ante* any employees who have been disciplined or who have suffered any losses by reason of said policy, including, *inter alia*, reimbursing any employees for moneys and/or other benefits lost because of any such suspensions, discharges, or other discipline and reinstating any employees to their former positions or, if they are unavailable, to substantially equivalent ones, without prejudice to their seniority or other rights and privileges. Losses of moneys and/or other benefits shall be computed in the manner prescribed by the Board in *F. W. Woolworth Company*, 90 NLRB 289 (1950), with interest as prescribed by the Board in *Florida Steel Corporation*, 231 NLRB 651 (1977). See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Zero Corporation, Zero East Division, Monson, Massachusetts, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Publishing, maintaining, and enforcing in a discriminatory manner at its plant in Monson, Massachusetts, an unlawful no-solicitation rule.

(b) Coercively interrogating its employees about their union activities.

(c) Giving employees the impression that their union activities are under surveillance.

(d) Promising either expressly or impliedly that employees will receive pay increases and other benefits if they vote against the Union.

(e) Promising employees promotions or special reviews in exchange for their withdrawal of support for a union.

(f) Soliciting and adjusting grievances from employees in order to influence employees in their selection of a bargaining representative.

(g) Threatening that employees would lose benefits or that the plant would be closed or relocated if the Union was voted in.

(h) Threatening that the Company would bargain from scratch if the Union was voted in.

(i) Threatening to withhold benefits if the Union did not withdraw its objections to the representation election.

(j) Directing employees publicly to support Respondent's position on an election campaign issue.

(k) Giving written warnings to employees because of their union activities.

(l) Denying privileges to employees, such as changes in vacation schedules, because of the employees' union activities.

(m) Refusing to bargain collectively with International Union of Electrical, Radio and Machine Workers, AFL-CIO-CLC, as the exclusive bargaining representative of its employees in an appropriate unit composed of:

> All full-time and regular part-time production and maintenance employees including production control coordinators, expeditors, power plant employees, employed at Respondent's facility in Monson, Massachusetts, but excluding all office clerical employees, production planners, estimators, guards and supervisors as defined in the Act.

(n) Instituting unilateral changes in the wages, hours, and terms and conditions of employment of unit employees by establishing an absenteeism/-tardiness policy without first bargaining with the Union.

(o) Suspending, discharging, or otherwise disciplining employees pursuant to said absenteeism/-tardiness policy.

(p) In any other manner interfering with, restraining, or coercing employees in the exercise of their rights under Section 7 of the Act.

2. Take the following affirmative action designed to effectuate the policies of the Act:

(a) Immediately revoke and suspend enforcement of the no-solicitation rule found here to be unlawful.

(b) Expunge from the personnel records of the Company all references to a record of a verbal warning given to Allen Waite on August 23, 1979.

(c) Upon request, recognize and bargain collectively with International Union of Electrical, Radio and Machine Workers, AFL-CIO-CLC, as the exclusive collective-bargaining representative of its employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed contract.

(d) Rescind the absenteeism/tardiness policy established September 14, 1979.

(e) Expunge from any employee personnel files or other records any references to suspensions, discharges, and other discipline issued pursuant to said policy.

(f) Offer any employees suspended, discharged, or otherwise disciplined solely as a result of the unilateral establishment of said policy immediate and full reinstatement to their former positions or, if they are not available, to substantially equivalent ones, without prejudice to their seniority or other rights and privileges previously enjoyed.

(g) Make whole any employees suspended, discharged, or otherwise disciplined pursuant to said policy in the manner set forth in the text preceding this Order.

(h) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of moneys and/or benefits owed under the terms of this Order respecting rescission of all disciplinary actions.

(i) Post at its Monson, Massachusetts, location copies of the attached notice marked "Appendix."[21] Copies of said notice, on forms provided by the Regional Director for Region 1, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(j) Notify the Regional Director for Region 1, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

IT IS FURTHER ORDERED that the election conducted in Case 1-RC-16391 be set aside and it hereby is, and that Case 1-RC-16391 be dismissed.

[21] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

WE WILL NOT publish, maintain, or enforce in a discriminatory manner a no-solicitation rule.

WE WILL NOT coercively interrogate our employees.

WE WILL NOT give employees the impression that their union activities are under surveillance.

WE WILL NOT promise our employees promotions or special reviews in exchange for their withdrawal of support for a union.

WE WILL NOT solicit or adjust grievances in order to influence our employees in their choice of a bargaining representative.

WE WILL NOT threaten our employees that they will lose benefits, or that the plant will close or relocate if a union is voted in.

WE WILL NOT threaten employees by telling them we will bargain from scratch if the Union is voted in.

WE WILL NOT threaten to withhold benefits from the Union if the Union does not withdraw its objections to the representation election.

WE WILL NOT direct employees publicly to support our position on election campaign issues.

WE WILL NOT give written warnings to employees because of their union activities.

WE WILL NOT withhold privileges from employees because of their union activities.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their Section 7 rights under the Act.

WE WILL remove all record of a warning given to Allen Waite from his personnel file.

WE WILL remove reference to the existing no-solicitation rule from our employee handbook and anywhere else where it may appear.

WE WILL, upon request, recognize and bargain with International Union of Electrical, Radio and Machine Workers, AFL-CIO-CLC, as the exclusive bargaining representative of our employees in the appropriate unit composed of:

All full-time and regular part-time production and maintenance employees including production control coordinators, expeditors, power plant employees employed at our facility in Monson, Massachusetts, but excluding all office clerical employees, production planners, estimators, guards and supervisors as defined in the Act.

WE WILL rescind the absenteeism/tardiness policy established on September 14, 1979.

WE WILL expunge from any employee personnel files or other records any references to

suspensions, discharges, and other discipline issued pursuant to said policy.

WE WILL offer any employees suspended, discharged, or otherwise disciplined solely as a result of the unilateral establishment of said policy immediate and full reinstatement to their former positions or, if they are not available, to substantially equivalent ones, without prejudice to their seniority or other rights and privileges.

WE WILL make whole any employees who were suspended, discharged, or otherwise disciplined solely as a result of the unilateral establishment of the above policy.

WE WILL NOT institute changes in the wages, hours, and terms and conditions of employment of unit employees by establishing an absenteeism/tardiness policy without first bargaining with the Union.

ZERO CORPORATION, ZERO EAST DIVISION

DECISION AND REPORT ON OBJECTIONS

STATEMENT OF THE CASE

GEORGE F. MCINERNY, Administrative Law Judge: This case arises out of a series of charges filed by the International Union of Electrical, Radio and Machine Workers, AFL-CIO-CLC, herein referred to as the Union, in Case 1-CA-16142 on May 30, 1979;[1] in Case 1-CA-16183 on June 6, amended on June 14; in Case 1-CA-16536 on August 21, amended on September 13, November 5, and December 3; and, in Case 1-CA-16806 on November 5, amended on December 3, alleging that Zero Corporation, Zero East Division, herein referred to as Respondent or the Company, had engaged in and was engaging in unfair labor practices within the meaning of the National Labor Relations Act, as amended, 29 U.S.C. § 151, *et seq.*, herein referred to as the Act.

Concurrently, on May 30 the Union filed a petition in Case 1-RC-16391 seeking to represent certain of the Company's employees. Following a Stipulation for Certification Upon Consent Election entered into between the Company and the Union on June 19, and approved by the Acting Regional Director for Region 1 of the National Labor Relations Board, herein referred to as the Board, on June 25, an election was conducted on August 23 under the auspices of the said Regional Director. The results of the election showed that out of an approximate total of 297 eligible voters, 116 voted for the Union, 157 voted against the Union, there were 5 void and 13 challenged ballots. On August 28 the Union filed objections to conduct affecting the results of the election. On October 27 the said Regional Director issued a Report on Objections, pointing out that the allegations in a number of those objections duplicated allegations in the unfair labor practice charges theretofore received. These objections were then consolidated with a complaint alleging multiple violations of the Act issued by the Regional Director on December 20. Respondent filed an answer to this consolidated complaint denying the commission of any unfair labor practices.

Pursuant to notice contained in the consolidated complaint a hearing was held before me at Northampton, Massachusetts, on March 3 through 7, and March 10 through 12, 1980, at which all parties were represented by counsel and had the opportunity to present testimony and documentary evidence, to examine and cross-examine witnesses, and to argue orally. Following the close of the hearing, all parties submitted briefs, which have been carefully considered.

On the entire record, including my observations of the witnesses and their demeanor, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Zero Corporation is a California corporation which maintains a manufacturing facility and offices in Monson, Massachusetts, known as Zero East Division. At Zero East, Respondent manufactures deep-drawn aluminum, steel, and plastic housings and casings for computer elements, suitcases, briefcases and other specialized cases, medium and small stampings, and other related products. During the calendar year ending December 31, 1978, Respondent purchased and received goods valued at over $50,000 directly from points outside Massachusetts, and in that same period sold and shipped from its Monson plant directly to points outside Massachusetts goods valued at over $50,000. The complaint alleges, the answer admits, and I find that Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The complaint alleges, the answer admits, and I find that the International Union of Electrical, Radio and Machine Workers, AFL-CIO-CLC, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Introduction*

While the issues in this case are not particularly complicated, there are many incidents involving a lot of people extending from the latter part of May until the end of August. These factors present problems in organizing the material so that those who read this Decision will be able to follow the narrative and the interrelation between the parts of the narrative, and identify the conclusions reached. The General Counsel chose to divide the allegations of the complaint into four main categories of issues, the first dealing with what was alleged to be a discriminatory no-solicitation rule, and incidents of disparate enforcement of that rule; second, incidents of alleged restraint and coercion of employees by supervisors; third, allegations of unlawful warnings, deprivation of privileges, and discharge of employees; and, fourth, un-

[1] All dates herein are in 1979 unless otherwise specified.

lawful refusal to bargain by the Company. Added to these groupings in the complaint are the allegations in the objections to conduct affecting the results of the election, which have been referred to me for decision. Within the first and second categories the General Counsel saw fit to classify the various violations by the supervisor who is alleged to have committed them, rather than chronologically.

It seems appropriate to me, then, to follow in this Decision, the lines set down in the complaint, dividing consideration of the alleged unfair labor practices into four main sections, followed, as will be seen, by a discussion of the objections. Thus I will consider in order the no-solicitation rule and issues growing out of that rule; the instances of alleged restraint and coercion of employees; allegations of unlawful discrimination against individual employees; the alleged unlawful refusal to bargain by Respondent; and, finally, the objections to the election.

B. *The No-Solicitation Rule*

At all times material to the issues in this case Respondent has maintained in a handbook distributed to all employees, a rule entitled "Solicitations." That rule provides as follows:

> Solicitations, collections, and the circulation of petitions however well meant, often result in misunderstanding and feeling of favoritism. To preclude the possibility of any misunderstandings, all activities of this nature must have the prior approval of the personnel department.

There was little evidence of experience under this rule before the union election campaign which began in May. Respondent's manager of manufacturing, Patrick M. Hayes, testified there were no solicitations of any kind in the plant prior to the advent of the Union. This was undenied, and, indeed, was the only evidence on the subject, but, notwithstanding, I find it difficult to believe. My own experience reveals that in any industrial plant, saving only those which operate under the strictest interior discipline, there is always activity of the kind proscribed by this rule; charity drives, sales of raffle tickets, Girl Scout cookies, collections for sick or injured employees, and a myriad of other solicitations.

After the start of the union campaign, several incidents occurred which are alleged by the General Counsel to violate Section 8(a)(1) of the Act and, at the same time, to show discriminatory enforcement of the no-solicitation rule.

The first of these incidents occurred on August 1 as the Union began the distribution of leaflets to employees. On the afternoon of the first, Gary Villamaino, a welder, who was the leading union adherent, had finished washing up and was heading for the timeclock to punch out. Villamaino had passed out leaflets that morning and had others in his possession which he intended to pass out after he had punched the timeclock. He was at that point observed by Hayes and another supervisor, John Dryjowicz.[2] According to Villamaino and another welder, Gregory Frew, who was within earshot, either Hayes or Dryjowicz said to Villamaino that he was not to pass out the leaflets. Villamaino, thinking that the supervisor had meant that he should not distribute the leaflets while inside the plant, replied "all right," then punched out. He then started to pass out a leaflet to an incoming second-shift employee when Dryjowicz said to him "You had better not do that." Villamaino, who the record shows was not shy about speaking up to management people, said he thought he had a right to do it. Dryjowicz said he did not think so. Villamaino then had a conversation with Hayes and asked him in the course of it if he would check with company attorney Ostrowsky. Hayes agreed to do so. Villamaino did not distribute any more literature that day, but, accompanied by Frew, left the plant and went home. Two days later either Hayes or Dryjowicz told Villamaino that it was all right to pass out leaflets at the door.

In separate but similar incidents, which also occurred about August 1, both Frew and Villamaino testified that they were passing out leaflets in the morning before work outside the door of Respondent's Hydro department. They were told by a supervisor, Frank Benoit, that they could not hand the leaflets out at that place. Benoit added that he had been told that the Union did not have the right to do what the employees were doing. Later that day, according to Frew, Benoit came by Frew's work area and apologized, saying that it was all right to pass out literature.

Other than these two incidents which occurred at about the same time, there was no further attempt to stop the handbilling at the entrances to the plant. The evidence shows that, in addition to the distribution of literature at the entrances, there was considerable activity within the plant.[3] The literature distributed was brought into the plant. Employees wore IUE buttons and T-shirts to indicate support for the Union, or "I'm for Zero" buttons which, despite the negative connotation, presumably indicates suppport for the Company. Stickers, which I assume were pressure-sensitive bumper stickers, indicating support for the Union were affixed to locations around the inside of the plant (of which more later), and posters urging employees to "Vote No" (and other legends which will be discussed below) were affixed to the walls.[4] There was no evidence beyond this that any union literature was actually distributed inside the plant, but there was testimony from Villamaino and by Dennis Morin, who was an employee at the beginning of the campaign but was appointed a supervisor during the course of the campaign, that they handed out authorization cards in the plant, and Pat Hayes testified that he handed out procompany literature and "I'm for Zero" buttons, which he had obtained from General Manager Ronald R. Hess, to employees in the plant on working time.

[2] Variously misspelled in the record.

[3] The physical plant consists of two buildings, one referred to as "Main Street" and the other as "Bliss Street." There is no significance in this case as to which building was involved, as the actions considered herein concern persons rather than places.

[4] There was some evidence from employee Roberta Parker that union leaflets were also affixed to the walls.

There were two other incidents growing out of the no-solicitation rule which happened before the election. The first involved employee Frank Woodman and Supervisor Chris Sobel.[5] According to Woodman, Sobel came into his work area, around August 8, picked up a union leaflet which was lying on a desk, and threw it into a wastebasket, saying that it did not belong on company property. The second incident was reported by Roberta Parker, who, besides describing several supervisors hanging pro-management posters in her department at some time before the election, also observed Pat Hayes removing union leaflets from the walls. Neither of these incidents was denied. Hayes did not testify about removing union leaflets, and Sobel did not testify at all. As will be more fully discussed below, I had problems with the credibility of both Woodman and Parker, but because I do not believe one part of their testimony I am not thereby constrained to disbelieve all. I found their testimony on these incidents, besides being undenied, to be logical in the light of other circumstances of the case, and credible. I find that the incidents occurred as these employees testified.

After the election was over employee William Reynolds testified that on August 24 Supervisor Allen Curtis came up to his work station and tore a union sticker off the rail of a catwalk saying that it was on company property and he did not want it there. On August 30, Reynolds testified, Curtis handed out a letter from Hess to employees informing them that the Union had filed objections to the election. I found Reynolds to be a completely credible witness and Curtis did not testify. Thus I find these incidents to have occurred as stated by Reynolds.

In evaluating the no-solicitation rule and its enforcement as outlined above, I have considered as well all of the facts in the case in order to place this aspect of the case in a proper setting. The Company's antiunion feelings are manifest, and may be clearly seen in a letter to all employees from the then general manager, Bill Wood, dated June 4, in which he emphasized "We want you to know that Zero opposes union interference in our business. Our Company has a long history of union free operation for many good reasons." It goes without saying that the Company has the right to hold whatever opinions it wishes about unions in general and unionization of its plants in particular, and it is only if and when those opinions are transmitted into words or actions which contain promises of benefit to employees or threats of retaliation against employees that the Company's right of free speech is limited by the Act.

In considering the no-solicitation rule and the incidents described above, I find first that the rule itself is an invalid attempt to curb or control the employees' right to organization. While the rule is not a flat prohibition, it does prohibit all solicitation unless approved by management. There was no evidence that there were serious or legitimate business reasons for the promulgation of the rule, and the reasons stated in the rule itself are meaningless in the absence of some explication. Looking to the enforcement of the rule it is clear that there was a difference between its application to solicitation for the Union and the Company's own efforts to air its own views. Like so many other aspects of this case this disparity is not extreme, and union transgressions of the rule, insofar as noted in the evidence, were not marked by adverse company action. The sum of the evidence shows that there was considerable clandestine union activity on the premises, but it further shows even more, open, activity by the Company in the placing of posters throughout the plant, and in the distribution of procompany literature on working time, in working areas, by supervisors. Therefore, I find, even in this comparatively civilized situation, not only that the rule itself was invalid, but that the Company's action in forbidding union activity while itself engaging in campaign activity in the workplace is violative of Section 8(a)(1) of the Act. *N.L.R.B.* v. *Babcock & Wilcox Co.*, 351 U.S. 105 (1956); *Stoddard-Quirk Mfg. Co.*, 138 NLRB 615 (1962); *F. W. Woolworth Company* v. *N.L.R.B.*, 530 F.2d 1245 (5th Cir. 1976).

In addition, I find that the actions of Company Supervisors Hayes, Dryjowicz, and Benoit in ordering employees Villamaino and Frew to stop distributing union literature in August violated Section 8(a)(1) of the Act. I also find that the action of Supervisor Sobel in throwing a union leaflet in the wastebasket in the presence of employee Woodman, the action of Supervisor Curtis in removing a union sticker from the catwalk at employee Reynolds' work station, and the action of Hayes, observed by employee Parker, in removing union literature from the plant walls, all were undertaken, not to protect the Company's legitimate property interests, but to discourage union activity. *F. W. Woolworth Company, supra.*

C. *Incidents of Restraint and Coercion*

1. Fred Lesniak

Lesniak was, admittedly, a supervisory employee in Respondent's department 1000. About May 25, according to Gary Villamaino,[6] Lesniak came up to him at his work station. Another employee, Al Dudek, was also present. Lesniak began the conversation by asking the employees what was new, then asked whether they had heard "rumors to the effect that a union was trying to come in to Zero." They answered that they had and Lesniak asked them how they thought the employees would vote in an election if it got that far. They replied that their department would probably be 90 percent union. Lesniak then asked what union it was, and the employees said that they did not know.

About a half hour later Lesniak again came up to Villamaino at his work station and asked him, three times, what union was trying to come into Zero, and, like Peter, Villamaino three times denied that he knew.[7]

On May 30, Villamaino testified that Lesniak again approached him at his work station, and again asked him what was new. Villamaino replied that nothing was new, and then Lesniak asked him if he knew a lot. Villamaino

[5] Also referred to in the record as Chris Obel.

[6] Contrary to Respondent's position, I found Villamaino to be a credible and candid witness. I credit his version of these events. Lesniak did not testify about these incidents.

[7] There is no evidence of a cock crowing at this time.

asked him what he wanted to know and Lesniak replied that he wanted to know "everything."

In another incident on May 30, employee Gregory Frew testified that he was at his work station when Lesniak, who had been talking with Villamaino, came over to Frew's work station and asked him what was the name of the union that was trying to get in there.

All of this may sound innocuous, particularly since it appears from a reading of the first paragraph of Bill Wood's June 4 letter that, at least up to the time of the filing of the petition in Case 1-RC-16391 on May 30, Respondent was not certain of the identity of the union which was working to organize its employees. However, it is clear that Villamaino was the first and principal supporter of the Union, and, by his own testimony, had been active since March, 2 months before the campaign really began. He was so recognized by management at a later time as attested to by Pat Hayes and Ron Hess. In addition, there is evidence that General Manager Bill Wood, as early as May 27, was aware of Villamaino's participating in the organizing drive at that time. It is evident from these incidents with Lesniak, as well as other incidents which in my opinion are related, that management had become aware of a union presence in the plant and of Villamaino's participation, and was, from the top level, General Manager Wood, down to line supervisors like Lesniak, trying to gain information as to the identity of the Union and its prospects among employees. In view of Respondent's expressed attitude, and in the absence of a showing of any otherwise valid purpose, I find that Lesniak's questioning of Villamaino on May 25, which might otherwise appear harmless, had a tendency to restrain and coerce employees in violation of Section 8(a)(1) of the Act. I note particularly in this regard Lesniak's returning to Villamaino,[8] a half hour after the original conversation, and repeatedly asking him the identity of the union. From this it seems clear that his interest was more than passing, and the repetition would serve to convey to Villamaino the fact that Lesniak did not believe his denials.

For the same reasons, I find that Respondent further violated Section 8(a)(1) by Lesniak's interrogation of Frew on May 30, although there was not in that instance the same sort of repetitive questioning.

The General Gounsel also alleged that Lesniak threatened employee Dennis Morin on June 4. I will consider this allegation in connection with the warning itself later in this Decision.

2. Bill Wood

Wood was the general manager of Zero East, in charge of the whole operation from a period before the incidents in this case occurred until sometime in June, when he was transferred to the position of vice president of Respondent and general manager of Zero West in California.

While he was in Massachusetts, Wood also served as bishop (a pastor) of the Church of Jesus Christ of Latter Day Saints on Maple Street in Springfield. An employee named Allen Waite was a member of the church and on May 27, after services were over, Waite and Wood had a conversation in the parking lot of the church. According to Waite, whom I found to be a credible witness, Wood approached him in the parking lot, said hello, then commented that he was surprised that Villamaino and Frew were so prounion. Waite said that he did not know what was going on, and the conversation turned to matters concerning a church project in which they were both interested.

The General Counsel has alleged that this remark by Wood was intended to give the impression that the employees' activities were under surveillance by management. I do not agree. Wood did not testify, so that Waite's story is both credible and undenied. But it appears to me that the statement which Wood made was merely a passing remark preliminary to the real purpose of the conversation, which was to discuss a project which would benefit the church. Although Wood later displayed his anxiety about union activities, and it is natural that he would, as manager of a plant whose parent company opposed "union interference" in its business and which had a "long history of union-free operations," I cannot discern any trace of that anxiety or concern in this brief exchange.

On May 29, Wood began a series of conversations with employees. The first of these occurred at 7 a.m. on the morning of May 30 when Wood approached Villamaino at the latter's work station.[9] Wood opened the conversation by asking about Villamaino's weekend, and the weather, then got to the point by asking Villamaino if he was involved in organizing a union at Zero East. Villamaino admitted that he was and Wood asked him why. Villamaino replied that some of the staff were difficult to work for, and then Wood asked who they were. At this point Villamaino hesitated, then Wood asked how was he supposed to do his job if he did not know what was going on "down here" (in the work area). Wood then asked if it was Brian McLaughlin (a production manager) and Villamaino said it was and that McLaughlin was difficult to work for.[10] Wood then asked about Sullivan (John Sullivan, one of Respondent's managers of manufacturing) and Villamaino said that Sullivan was not very well liked in the shop. Wood then asked, three times, about John Dryjowicz and Villamaino said that Dryjowicz was just trying to do his job. Wood then asked Villamaino what he could do to change his mind. Villamaino answered that he did not think there was anything, that the campaign was going and he, Villamaino, could not stop it. Wood said that he could vote no, but Villamaino said he could not do that. Finally, Wood asked how Villamaino felt about an in-shop grievance committee and the latter replied that it was too late for that now.

[8] Villamaino noted the rarity of any visit by Lesniak to his work station.

[9] Here again I rely on Villamaino's credible and undenied testimony, which is in some respects corroborated by the testimony of Frew, Jean Antonovich, and Robert McLean with respect to Wood's activities during this period.

[10] Shortly after this, McLaughlin was discharged, but no reason for that action was brought out in this record, and there is no way I can connect that discharge with this conversation.

While Villamaino hesitated before naming the names of unpopular supervisors, there is no other indication that he was otherwise intimidated by Wood's questions. However, the test in cases of this type is not the subjective effect on the employee questioned, but the inherent restraint and coercion caused by questioning, in the work place, by the highest company official at the plant, with no assurances against reprisal. Even Villamaino, who the evidence shows was not overawed by supervisors or company officials, hesitated when asked to name names of supervisors he considered responsible for the employee movement toward organization.

I further find that by questioning Villamaino about the faults of supervisors, and pressing that questioning by the remark that he could not do his job unless he knew what was going on in the shop, Wood was soliciting Villamaino to present grievances, and impliedly telling him that those grievances would be remedied. This theme, that the Company would take care of the employees, runs through the whole campaign.

This incident, even if it were isolated, would in my view constitute a violation of Section 8(a)(1) of the Act, but a review of all the evidence shows that in this period from May 29 until June 4 there were a number of similar incidents involving Wood and other supervisors and showing a pattern of conduct designed to discover the identity of union supporters, to estimate the strength of the movement, and to give employees the impression that their activities were known to management. I appreciate the fact that management in situations like this, when through informants or rumor the fact of organizational activity may be tantalizingly revealed, is driven to seek specifics on the identity of the leaders, their strength and numbers, and the reasons for their disaffection. The rules are clear, however, that the search for information must be careful and circumspect, and certainly the rules do not permit wholesale interrogation, solicitation of grievances, and the giving of the impression of surveillance which I have and will find in this case. The facts here, particularly the similarity between the types of questions asked by different supervisors to different employees at different times during this short period of time between May 29 and June 4, lead me to infer and find that the questioning, and the impression of surveillance imparted, were the result of a calculated and wilfull management decision not only to gain information on union adherents, but to solicit employees to reveal the causes of their discontent, and to plant the impression of superior knowledge on the activities and identity of those who would disturb its union-free tranquility.[11]

For these reasons I find that Wood's interrogation of Villamaino violated Section 8(a)(1) of the Act in that it involved both unlawful irterrogation as to Villamaino's union activities and the solicitation of grievances.

On May 29 Wood approached employee Jean Antonovich[12] where she worked as a trim saw operator in the sheet metal department. The evidence in this case shows that Antonovich was one of the principal union adherents, along with Villamaino and Frew. Wood told Antonovich that he had heard she was involved in organizing a union. She admitted that she was. He asked the reason why, and she replied that she felt she was on a sinking ship at Zero, and that she could get another job, stay at Zero and go deeper, or die. Wood did not preface his questions by saying that he did not want to threaten her and that she was free to do what she pleased.

While this conversation was not fully developed either in direct examination or cross-examination, I find that by telling Antonovich that he heard she was involved with organizing a union Wood willfully gave her the impression that Respondent knew about that activity in violation of Section 8(a)(1) of the Act. He further violated Section 8(a)(1) by his next question, which was why she was involved. I cannot find that he actually solicited grievances because of the lack of evidence beyond her response to his question.

On the morning of May 30 at 8:10 a.m. Wood came up to the place where Frew was working and asked him if there had been any union activity there on that day, whether he had seen any union cards, and if he had signed a card. Frew responded negatively to all three questions.

Frew was a credible witness, judging from his demeanor on both direct examination and cross-examination, and his testimony on this incident was undenied. There was no evidence that Wood prefaced his questions with any suggestion that Frew did not have to answer his questions or that he would be free from retaliation if he answered them. I find this interrogation also to violate Section 8(a)(1) of the Act.

On June 4 at or about 9:10 a.m., Wood approached Robert McLean, a traffic controller. Wood, who had never before engaged McLean in conversation other than to nod, or say hello, in passing, asked if he could have a word with McLean and the two of them walked out onto a platform. Wood then said that he knew McLean was a union organizer and that he thought at that time it would be detrimental to have a union at Zero. McLean replied that he did not know where Wood got the idea that McLean was an organizer. He went on to say that he was a family man and did not want to take unnecessary risks, but that he had gone to a couple of union meetings. He said that he had gripes as everybody did and he wanted to hear what the Union had to say.[13] Wood then asked McLean what his gripes were. McLean told him he objected to paying so much for insurance and to the difference in vacation benefits between office and shop employees. Wood then repeated

[11] I draw adverse inference from the failure of Wood to testify. It would be unlikely that the vice president and general manager of Zero West would testify adversely to the interests of the Company. The inference is drawn on the basis of positive evidence as I have and will point out in this Decision.

[12] Antonovich impressed me as a candid and credible witness. None of her testimony was denied.

[13] Beyond this statement, and the fact that McLean had signed an authorization card for the Union, the record does not reveal whether McLean had done any organizing for the Union, or whether Wood's characterization of him as an organizer was accurate.

that it was detrimental (to have a union at Zero) at that time, and pointed out to McLean that big companies dealing with Respondent were happy to learn that it was nonunion. Wood concluded by patting McLean on the back, saying that he did not know where he got the idea McLean was an organizer, and concluding that he hoped McLean would not sign a card.

In this incident I again find Respondent attempting to coerce employees by giving them the impression that their activities were under its surveillance. This interchange between Wood and McLean was not that of two familiar aquaintances commenting casually on the events of the day. Wood sought out McLean, whom he had never spoken to individually, and accused him of participating in organizing. Wood's letter to employees, dated that same day, June 4, emphasized Respondent's opposition to the Union. Whether McLean had or had not acted as an organizer he had attended meetings and he had signed an authorization card before this incident.[14] Thus, McLean would be left with the justified impression that Respondent was aware of this activity; however, Wood may have been mistaken about the level of that activity. I find this part of the conversation to be a violation of Section 8(a)(1) of the Act.

In regard to solicitation of grievances it would not appear from the evidence that there was any promise, express or implied, to remedy these grievances. In addition, I cannot find a violation of the law in Wood's assertion that it would be "detrimental" to have a union at Zero. There is no indication as to whose detriment this would be, and no prediction of loss of jobs or benefits to employees if the Union came in.

The evidence is simply not sufficient to allow me to make a finding that Respondent violated the law by soliciting grievances, or stating that the Union would be detrimental.

As previously noted, the Union filed the petition in Case 1-RC-16391 on May 30. On June 19, the parties met and worked out a stipulation as to the date, place, and time of the election, together with other details of the election. On June 20, Wood addressed a letter to employees outlining some of these provisions. He then went on to point out the importance of the upcoming union election to Zero East employees, and expressed the desire that employees have the opportunity to hear fully from both sides on the issues, and to make their decision based on the facts. He then continued as follows:

> Under our American democratic system you have the *right* and opportunity to decide whether to believe wild, unenforceable union promises of future benefits or to rely on Zero's record of fair treatment and accomplishments for its employees both at Zero-East and other Zero locations.
>
> No doubt a number of you are aware Zero-West employees soundly rejected an organizing attempt by the Machinists Union on June 7, 1979. Although the vote tally was 283 for Zero to 212 for the union, the union challenged 62 votes which were not opened because of Zero's overwhelming victory. If you add the challenged votes to Zero's total, Zero-West employees defeated the union by more than 130 votes! Even more important than the election victory itself is what Zero management did immediately after the election was over. Zero-West made changes in the health insurance plan, certain job classification and pay ranges and other problem areas brought to light in the pre-election period, all in less than five days after the union was defeated. This proves *Zero* listens.

In order properly to evaluate this letter in the light of principles laid down by the Board and the courts it is necessary, first, to examine in broad, general terms the entire course of the campaign. On the union side, it is evident from the testimony of Chet Barker that the Union considered the matter important enough to assign at least two International representatives and to install them in a local motel where a number of meetings were held with employees throughout the campaign, undoubtedly requiring expenditures for space and refreshments. Numbers of leaflets and flyers advertising the Union's position were prepared, printed, and distributed, and quantities of buttons, T-shirts, and even balloons were purchased and handed out to employees.

Although the plant is located in a small town in a rural area, the employees, if the majority of the witnesses in this case are representative of the work force as a whole, and there is no reason to doubt this, seemed to me to be mature, thoughtful individuals who were interested in the best method to improve their condition.

Perhaps for this reason the campaign, viewing both the union and company activities throughout, was conducted on a higher plane than is, unfortunately, common. This is not to say that the parties were not deadly serious, or that flareups did not occur, as in the *contretemps* between Supervisor Allen Curtis and employee William Reynolds, or the brief flash of temper directed at Ron Hess by Villamaino at the hearing. The former incident did not occur until after the election, and the latter may have been due to the strain Villamaino felt after his session on the witness stand.[15] But beyond these isolated incidents which occurred after the campaign was over, there were only a few incidents of a more coercive and tough approach by some lower level supervisors, hinting at "bargaining from scratch" or plant closing, which will be discussed below. In the main, judging from the allegations in the complaint, and the evidence concerning those allegations, the bulk of the alleged coercive activity happened between May 25 and about June 7.

I have already found an unlawful pattern of interrogation, solicitation of grievances, and the impression of surveillance. After the first part of June there was very little further interrogation of employees. Apparently, as Pat Hayes testified, it was easy to tell who was for the Union by the buttons they wore. There were a couple

[14] The Board's Regional Office time and date stamp on the reverse side of McLean's authorization card shows that it was received at the Regional Office on June 1.

[15] I do not read into this incident a reflection on Villamaino as urged upon me by Respondent's brief. One man's paranoia is another's militancy.

more instances of supervisors giving the impression of surveillance, and only a few more occasions when grievances were solicited. With the distribution of the June 20 letters it seems to me, the emphasis of the campaign by the Company became directed to pointing out, again and again, the events which had happened at Zero West. Another Union had tried to organize out there. The course of that campaign revealed that there were "problems" in the areas of wages, job classifications, pay ranges, and other areas. The union in California lost the election, and, in less than 5 days, Zero made changes to remedy the problems. This, according to the June 20 letter, proved that "Zero listens."

It seems to me that the message conveyed by this letter would be clear to any reasonably intelligent concerned employee, as I have found these employees to be. That message was, in effect, do not listen to the Union's "wild, unenforceable promises." Rather, "rely on Zero's record of fair treatment and accomplishments for its employees both at Zero-East," and, significantly, "other Zero locations." In case employees had some doubt about what that "treatment" and "accomplishments" were, the letter went on to give a concrete example, recently implemented at Zero West where the employees had rejected a union and were immediately thereafter rewarded with benefits, unspecified in the June 20 letter as to amount, reflecting "problem areas brought to light in the pre-election period."[16]

This can only have one meaning, that if the employees reject the Union they will receive benefits. This is only a thinly veiled promise, but I find it to be a promise nonetheless and I find the letter of June 20 to contain a violation of Section 8(a)(1).

While not arguing directly in its brief to the June 20 letter, Respondent maintains that the various specific references in the record to the gains received by Zero West employees were expressions of free speech protected by Section 8(c) of the Act. Certainly under this provision the Respondent is entitled to be "uninhibited, robust and wide open," even "vehement, caustic and unpleasantly sharp." *Linn* v. *United Plant Guard Workers*, 383 U.S. 53, 62 (1966). Predictions as to possibilities, or even probabilities, may be made within the protection of Section 8(c) and unless those predictions constitute a threat of reprisal or promise of benefit they will not be interdicted by the provisions of Section 8(a)(1). *N.L.R.B.* v. *TRW Semiconductors, Inc.*, 383 F.2d 753 (9th Cir. 1967). The Board, in making a determination that the provisions of Section 8(a)(1) do cut across the employer's exercise of free speech must specifically find the threat or promise which underlies its application of Section 8(a)(1) to the fact situation before it. *N.L.R.B.* v. *TRW Semiconductors, Inc., supra*; *Southwire Co.* v. *N.L.R.B.*, 383 F.2d 235 (5th Cir. 1967).

In this case I have found that the June 20 letter contained an implied promise of benefit. Looking at the letter as fleshed out by the rest of the record it is clear that what Respondent was promising was a 50-cent raise,[17] a reduction in insurance premiums paid by employees from $8 per month to $2.60 per month, and, later, an additional $50 per month "fuel adjustment," which would amount to 30 cents per hour. This was not a mere comparison between wage rates and benefits at one of Respondent's plants to another. If it had been just that, then *Walgreen Co. d/b/a Globe Shopping City*, 203 NLRB 177 (1973), might have been more to the point. Here, however, Respondent took pains to inform the Zero East employees that it was not until after the defeat of the union at Zero West that it granted the benefits. This point was emphasized over and over again, on a poster which was put up in the plant, during July, showing an ecstatic cartoon figure saying "I'm from Zero West and we got wage increases and improved benefits without a strike—by voting no!" and, after the arrival at the Zero East plant on July 25 of one Jack Frickel, described as a foreman from Zero West who was sent east to provide technical assistance and to help explain the intricacies of Respondent's pension plan, and his constant emphasis on the benefits enjoyed by Zero West employees after they had rejected the union.

3. Pat Hayes

As I have noted, Hayes was one of Respondent's two managers of manufacturing. As such he filled a position between the line supervisors like Curtis, Lesniak, and Dryjowicz and General Managers Wood, and, later, Hess.

On May 30, according to the credible and undenied testimony of employee Lillie Belle Corbin, Hayes came up to her while she was working as a punch press operator, and said that he was surprised that she was participating in the Union. Then, referring apparently to some problem Corbin had had, Hayes said he thought the problem had been solved, and then told Corbin that if she had any problems to come in to his office, that his door was open at any time.

I find Hayes' first remark to be another manifestation of what I have found to be a pattern early in the union campaign of willfully implanting in the minds of employees the impression that their activities were under surveillance, and I find this remark to Corbin, that Hayes was surprised at her union involvement, to be an additional violation of Section 8(a)(1).

There were no more allegations in the complaint concerning Hayes in the period from May 30 until the incidents which I have already described involving Villamaino, Frew, and the distribution of union literature on August 1. After that date, however, the complaint contains a number of allegations that Hayes' words and actions, attributable to Respondent, violated the law.

During the first week of August Hayes had a conversation with Villamaino at the latter's welding station. According to Villamaino, Hayes asked him if he had heard what "California had gotten." Hayes went on to detail

[16] The lack of specificity on the benefits was remedied later in detail by Respondent.

[17] Whether this was merely in the "hiring rate" as stated by Hess or whether it was an across-the-board increase as understood by employees is really immaterial. Any increase in the basic rate would, under any logical wage and salary program, trigger increases throughout the wage scale to maintain wage differentials for more skilled or senior employees.

the 50-cent across-the-board increase and the reduction in insurance premiums, adding that he thought that was a "hell of an increase." Hayes admitted that this conversation took place, but, in his version, Villamaino initiated the talk about the Zero West situation. When Hayes replied that he did not know what employees had received there, Villamaino then proceeded to tell him. As I have noted, I found Villamaino to be a reliable witness. I did not find Hayes to be so reliable. In this instance, for example, he professed ignorance of the benefits awarded by Respondent to Zero West employees. I find this less than credible in view of the fact that Wood had on June 20 informed all employees, in general terms, about those benefits and Hayes testified as to weekly management meetings during the union campaign at which I find it highly unlikely that the Zero West developments were not discussed. Either Hayes was not telling the truth to Villamaino in this meeting, or he was not telling the truth at the hearing. In either case I do not credit his testimony on this matter, and I find that the conversation occurred as related by Villamaino. As such I find that this conversation clearly fits the pattern which I have found was established by Respondent to show the employees that their rejection of the Union would be swiftly and substantially rewarded. I find that this conversation constituted a violation of Section 8(a)(1) of the Act.

A little later in the month of August, Hayes and Villamaino had another conversation, this time in Hayes' office in the plant. Hayes told Villamaino that the IUE had a history of strikes higher than any other union, and that everything the employees had came from the Company. He then asked Villamaino why he did not just drop the union campaign and walk away from it. Villamaino then asked Hayes if he did drop the union campaign what would happen to him. Hayes replied that he should not worry about his job and that he, Hayes, would go to bat for him if his job was in jeopardy.

This latter exchange is alleged in the complaint to constitute a violation of Section 8(a)(1). Hayes' statement, however, besides appearing to be something of a *non sequitur* to Villamaino's question, does not appear to me to contain a promise of benefit or a threat of reprisal. Hayes did not say that Villamaino's job would be in jeopardy, whether or not he continued his union activity, and he did not condition his support of Villamaino on his ceasing such activity. Thus I find the evidence insufficient to support the allegation in the complaint.[18]

On August 13, employee Yves Constant testified that he was passing by Hayes' office when Hayes said to him, "What kind of a guy are you? You are looking for more money and I see your name on the union paper." Constant's name, along with 65 others, was printed on leaflets urging employees to vote for the Union and identifying those whose names appeared as members of the Union's organizing committee. The evidence shows that leaflets were passed out during the first 2 weeks of August.

Hayes admitted that he had an encounter with Constant at the time and place mentioned, but he said that he stopped and criticized Constant because the latter was circulating rumors, which Hayes felt were untrue, branding Hayes as a racist. In this instance I credit Hayes over Constant. Constant's answers as described by Hayes are very like Constant's answers to questions asked him at the instant hearing. I will find that the answers Constant gave at the hearing were largely untrue, and, for the reasons given there, I find his testimony on his meeting with Hayes to be untrue and I find no violation of law in that meeting.

About August 7, employee Robert Gauthier testified that he had a conversation with Hayes in the grinding area of the plant. Gauthier was wearing a number of IUE buttons on his shirt and, according to his testimony, Hayes asked him why he was wearing the buttons because the Union could do nothing for him. Gauthier stated that he removed the IUE buttons. Although Hayes had not told him to take off the buttons Gauthier testified that he did not want to start a "big commotion" and that he felt more at ease. A little later Hayes came up to Gauthier and laid an "I'm for Zero" button on a table and asked if Gauthier would wear that. Gauthier did not say whether he picked up the button or put it on his shirt.

Again, Hayes testified to a somewhat different version of this conversation. According to Hayes, Gauthier was "loaded down" with union buttons. Hayes asked Gauthier how he thought he was going to stand up through the night (Gauthier worked the second shift) with "all that load" on him, adding that it seemed he would wear anything. Gauthier answered that he would even wear Zero buttons. Hayes had one on his shirt, took it off, and gave it to Gauthier.

With regard to this incident I do not believe it is necessary to weigh the relative credibility of Gauthier and Hayes. Gauthier was a group leader at the time and his testimony shows that he was later promoted to leadman with a 5-percent increase in pay. Further, I think Gauthier was something of an eccentric. He admitted at one point that he was wearing at least 50 union buttons. Ron Hess, in a later conversation with Gauthier, estimated that he was wearing about 200. Thus, in these circumstances I cannot find a violation of law in Hayes' remarking on the number of union buttons, or in his proffering a Zero button to go along with them.

About August 17 an employee named Dan Dennis, Jr., testified that he came into work and was told by another employee that Hayes had asked the second employee if Dennis had been to a union meeting on the previous night. Dennis confronted Hayes and after some discussion the latter admitted that he had asked the other employee whether Dennis had attended a union meeting the night before. Hayes added that he had asked "for personal reasons" and would give no further explanation. In his own testimony Hayes admitted asking about Dennis' union activity, but stated that he was concerned about Dennis' attendance. I was not impressed with Hayes' explanation. Other incidents in this case show that while Hayes did care about attendance the Company's, and

[18] Villamaino also testified that Hayes had asked him to drop the campaign several times but no charges or complaint allegations make an issue of these. Villamaino continued to campaign, and there is no indication that his job was threatened.

Hayes', approach to problems with attendance were handled personally and directly with the individual involved. I thus reject Hayes' attempted explanation and find no logical business reason why Hayes would want to know about Dennis' attendance at union meetings. Thus, although this interrogation does not fit into the pattern which I noted occurred in May and early June,[19] I find it to be a further violation of Section 8(a)(1).

Employee James Dupont testified that on August 22 he had a conversation with Hayes in which Hayes asked him what he expected to get out of the Union. They discussed this and then Hayes told Dupont that he had been at the "Vote No" meeting on the previous Friday and that he had been critical of the Company. Dupont admitted that he had, and outlined what he had said. Hayes replied that Dupont did not know what he was talking about.

I do not see any violation of the law in this conversation. Hayes and Dupont obviously differed in their views on the Union. Their discussion as related by Dupont was frank and open and free from coercion. Those qualities continued into the reference to the "Vote No" meeting, which Hayes as well as Dupont had attended, and Hayes' remark that Dupont did not know what he was talking about I view as protected free speech in the absence of any coercive intent or effect.

Also on August 22 employee Allen Waite testified that he had a conversation with Hayes and Dryjowicz during which Hayes asked Waite if he knew that adherence to the Union was against Waite's religion. As noted above Waite is a Mormon. Waite said it was not and Hayes said Bill Wood, who, as we have seen, is also a Mormon, had told him.

It does not appear to me that Hayes' question constitutes a violation of law. Whether or not the question was prompted by something Bill Wood had said to Hayes, there is no interrogation as to union activities in the question, and no express or implied threat or promise. I cannot find that this incident involved any restraint or coercion, even though I will find below that another part of the same conversation did constitute a violation of the law. There does not appear to me to be sufficient connection between that part of the conversation between Hayes, Dryjowicz, and Waite on this matter to convert Hayes' question about the strictures of the Mormon Church into a violation of Section 8(a)(1) of the Act.

4. Anthony Gregorio

Gregorio, named in the complaint as "Gregoria" and identified only as a "supervisor," did not appear or testify at this hearing.

Jean Antonovich testified, credibly, that she had a conversation with Gregorio shortly after she had talked to Bill Wood, as outlined above, around May 30. Gregorio asked her the same questions that Wood had asked, that he had heard she was involved in trying to organize a union, and the reasons for it. She gave the same replies that she had given to Wood. Gregorio then went on to mention that the Company had spent $60,000 on heating costs during the year, and he asked her, if she were in charge of Zero East and had problems that Zero East was having with the Union at that time, would she stay or go west or south.[20] Antonovich said that she knew what he wanted her to say, and continued that, as president of the Company with heating costs cheaper and with the union involvement, she would move. Gregorio did not reply to this, but did tell her that if it was within his power he would give her a special review,[21] but since the employees were involved with the Union he could do nothing about it.

The initial interrogation and impression of surveillance fits into the pattern I have found to have existed at the end of May and first part of June. I find that Respondent has violated Section 8(a)(1) by interrogating Antonovich and by giving her the impression that her union activities were under surveillance.

The portion of the conversation dealing with heating costs I also find to be a violation of Section 8(a)(1). Antonovich is a bright and alert person. Gregorio's comments about $60,000 in heating costs and union involvement were obviously designed to imply that the plant might move. She knew what he was trying to do and gave him the answer she knew he wanted. Beyond this, Zero does have plants in the west and the south where heating costs are not an economic factor, and certainly Antonovich would be presumed to be aware of plant closings and relocations from her part of the country. Thus Gregorio's question cannot be considered rhetorical, or idle, but, I find was intended to instill in Antonovich a very real fear that the plant would close if the Union added further economic problems to Respondent.

Finally, Gregorio's mention of a special review carried with it the real promise of financial benefit to Antonovich if the employees were not involved with the Union. I find this, too, to be a violation of Section 8(a)(1).

5. John Sullivan

Sullivan, like Hayes, was a manager of manufacturing. Unlike Hayes, Sullivan did not testify.

Dennis Morin[22] testified that on May 30 he overheard a conversation between Sullivan, a supervisor named LeBeau, and an employee named Peet. In the part of the conversation which Morin heard, Sullivan asked Peet if he had seen or heard anything about the Union going on. Sullivan also asked Peet if he had seen any union cards

[19] I have noted that by this time in the campaign the loyalties of employees were pretty well known by the buttons they wore. Dennis may have worn no button, or been considered by the Company to be a waverer. Whatever the motive, the interrogation was coercive and improper.

[20] Respondent also has a plant in Clearwater, Florida, which is known as Zero South.

[21] A special review is an extraordinary exception to Respondent's usual employee review procedures. The granting of a special review would likely result in a pay increase, and would be given as a reward for outstanding performance.

[22] Morin was a rank-and-file employee who was involved in several of the incidents in this case. On June 25 he was made a supervisor and as such he remained at the time of the hearing. Morin was called as a witness for the General Counsel and was obviously unhappy to be cast in that role. Despite that I found him to be generally a credible, if not particularly open or cooperative, witness.

going around. Peet replied that the only person he knew of who had cards was Morin.[23]

This is a clear instance of unlawful interrogation consistent with what I have found to be an early pattern of such actions during the union campaign, and I find that it violates Section 8(a)(1) of the Act.

At or about the same time, May 30 or 31, Sullivan came up to Greg Frew and said that he had heard "some very disturbing news"—that Frew was for the Union. Frew said he was curious about it. Sullivan then asked if Frew had been to any union meetings, and Frew denied that he had. Sullivan then said he found it hard to believe that Frew and "Gary" (Villamaino) were not invited to any meetings.

This is another instance of the late-May, early-June pattern with Sullivan attempting to give Frew the impression that his union activities were under surveillance, and constitutes a violation of Section 8(a)(1) of the Act.

On June 7, Sullivan approached Villamaino at his welding station and began a conversation by asking how things were doing. Villamaino replied that they were just fair. Sullivan asked what he meant by that and what was the problem. Villamaino proceeded to tell him, pointing out problems with rework of night-shift products, equal pay for women, and people being paid less than new employees they were breaking in. During this recitation, Sullivan took a sheet of paper from Villamaino, and wrote down the items Villamaino was telling him. After Villamaino had finished, Sullivan said he was going to give the paper to Bill Wood and see if they could be corrected. Sullivan said he would get back to Villamaino but there is no evidence that he ever did or that the matter was ever brought up again.

This incident I find to be another example of the unlawful solicitation of grievances undertaken by Respondent's agents in the early part of the campaign perhaps to avert the unionization of the employees. Whatever the motive, it is clear that such conduct tends to interfere with the employees' free choice of a bargaining representative, and with their rights under Section 7 of the Act and is a further violation of Section 8(a)(1).

6. Allen Curtis

Curtis is a former rank-and-file employee who was appointed to the midlevel supervisory position of production manager a short time before the facts in these cases developed. He did not appear or testify at this hearing.

Lillie Belle Corbin testified to a conversation she had with Curtis on June 7. In this conversation Curtis remarked that he had passed by the Masonic Temple[24] last night and had seen her car there. He said he thought her problem was over, and if she had any problems to come around and talk to him. Corbin admitted that her car was parked there and told Curtis that anytime a union meeting was held there her car would be parked there. Curtis said there were a lot more cars there but hers was the only one he recognized.

This incident occurred in the same time period where I have found unlawful impressions of surveillance. Here, however, there is no evidence that Curtis' observation of Corbin's car was anything but a coincidence. In addition, he did not mention the Union, although the reference to her "problem" may have been an indication that he knew she was at a union meeting. However, the evidence is not clear enough for me to draw that inference and I do not find a violation here.

Another incident involving Corbin and Curtis happened on June 20. Corbin had attended a meeting the day before in attorney Ostrowsky's office, at which the parties had agreed on the terms of a Stipulation for Certification Upon Consent Election. The next day Curtis asked Corbin how the meeting went. She replied that it went well, and he said that if the Union got in the Company would move. She answered that she did not think the Company could afford to do this, and he said that he knew how the Company worked, and if the Union got in they would be looking for a job within a year.

On the basis of Corbin's credible and undenied testimony I find this statement, a threat to close the plant if the Union came in, to be a violation of Section 8(a)(1) of the Act. There is evidence that Corbin told other employees about her conversations with Curtis, so that the threat was disseminated to others.

There is nothing in the evidence to show that this type of threat was a major part of Respondent's campaign, and I have found that the campaign was conducted on a relatively civilized plane, but there were a few exceptions, and, in the light of Respondent's expressed opposition to the Union and the patterns of unlawful conduct I have found, I cannot view these exceptions as isolated or harmless.

A second incident of this type occurred on June 12 when Curtis and employee Walter Pietryka were engaged in conversation. Pietryka testified, credibly, that he did not remember how it came up, but in that conversation Curtis told him that if the Union came in Zero more than likely would move south. Curtis also mentioned the high cost of fuel to operate the Bliss Street plant. This conversation was corroborated by Robert McLean, another employee, who was present. I find this, too, to be a threat to close the plant, and a violation of Section 8(a)(1) of the Act.

Sometime around the end of July or the beginning of August, Curtis had a conversation with William Reynolds, an electroplater with 12 years' experience. Reynolds was in Curtis' office with three other employees on an unrelated matter and, after that matter was taken care of, Curtis asked Reynolds to remain. Curtis opened their conversation by saying that he knew Reynolds was for the Union but he had a job to do and was going to try to enlighten him.

The General Counsel alleges that the statement that Curtis knew Reynolds was for the Union violated the law. I cannot find this to be so. This incident is separated in time from the early efforts by management to identify union supporters and I do not find this to be a part of that. In any event Reynolds testified that he was wearing a union button when he walked into Curtis' office.

[23] Morin was reluctant to testify about this last, but his affidavit given in the course of the investigation of these cases gave the substance of Peet's reply. I credit that affidavit for that fact.

[24] The Masonic Temple is in Palmer, Massachusetts, and was used for union meetings during the campaign.

The conversation continued with Curtis pulling a sheet of paper out of his pocket and telling Reynolds he was going to explain the Company's new pension plan. Reynolds, whom I found to be self-assured, opinionated, and blunt, told Curtis that he had studied the plan thoroughly and it "stunk." Curtis then mentioned the accident and health plan and Reynolds assured him that "stunk" too. Curtis brought up the trouble the Company was having in attracting skilled help. Reynolds' answer to that was to bring in a union and "help would be beating down the doors trying to get in here." Finally, Curtis told Reynolds that if the Union got in they would be "bargaining from scratch," and all benefits would be gone. Reynolds disagreed, and the discussion ended.

Viewing this statement in the context in which it was made really makes little difference. It is true in this case that Reynolds and Curtis had been friends for 8 to 10 years; that Reynolds frequently talked with him in his office; and the two of them were involved in an uninhibited and free-wheeling conversation. However, even in these circumstances a bold threat of this type constitutes a violation of law, and I find it to be a violation of Section 8(a)(1). *Nutrena Mills, Division of Cargill, Incorporated*, 172 NLRB 183 (1968).

On the day after the election, August 24, Curtis came up to Reynolds' work station. I have already considered Curtis' action in tearing a union sticker off the catwalk. Curtis then began a conversation with Reynolds by asking why the Union had decided not to allow the vote to be certified and what they expected to gain by it. This was evidently prompted by the action taken by a group of 50 or so employees who had gathered at a local motel after the election and voted to file objections to the election. There is evidence that Reynolds participated in this meeting and that his impassioned speech was a significant factor in that decision.

The conversation continued for 5 or 10 minutes at Reynolds' work station. Curtis again asked what the employees thought they could gain by their action. He added that, by putting in the objections, they were holding up any progress the Company may have planned from the time the union campaign started. Reynolds replied that the way Curtis was talking it would appear that Reynolds was one of the leaders. Reynolds denied that he was a leader, and stated that he did not become involved until almost 2 months after it started. Curtis said that this was not the way he had heard it, and went on to mention the speech Reynolds had made the night before which, according to Curtis, caused the objections to be filed.

The General Counsel urges that I find in this conversation two violations of law, the first on account of an impression of surveillance because Curtis told Reynolds he knew the latter had made a critical speech at the previous night's union meeting, and the second in that Curtis threatened Respondent's employees with loss of benefits because they had filed objections to the election.

With regard to the first allegation, it was apparent, from Reynolds' own testimony, that he was perceived by other employees as well as by management as the person primarily responsible for the filing of the objections. Whether this was objectively true is open to question, but the perception was there.[25] There were, according to Reynolds, at least 50 people at the union meeting on August 23, after the election, and it is apparent that the outcome of the election, and any post-election developments, were matters of intense interest to employees and management alike. Thus I infer and find that the happenings of August 23, including Reynolds' participating, would have become matters of general knowledge in the shop early on the 24th. I do not find this state of things analogous to the situation early in the election campaign where, as I have found, the Company made a wilfull and calculated effort to impress upon employees the idea that their actions and their loyalties were under company surveillance. By the end of August everyone's union sympathies were generally known. Certainly Curtis could have no doubt of Reynolds' position in the Union.

In these circumstances I do not find a violation of law in Curtis' identification of Reynolds as the Demosthenes of the Seven Gables Motel.

The second allegation arising out of this conversation is more subtle and involves an analysis of Respondent's motives before and after the election. As I have found, Respondent's campaign against the Union centered, from and after June 20, on the facts that a union attempt to organize Zero West had failed on June 7, and that, immediately thereafter Zero West employees were rewarded with increases in wages and other benefits. This theme as has been seen, and will be seen, in this Decision ran through the whole campaign. It is evident, and I find, that Respondent fully intended to redeem its promise when the election campaign at Zero East ended with the defeat of the Union. Indeed, to retain any credibility with its employees, Respondent would have been required to give at least the same benefits which were given at Zero West. Thus, it is not surprising that Respondent's officials were disappointed when objections were filed by the Union. This is manifest from the testimony of Reynolds on Curtis' reaction, and by Curtis' later remarks to employee Joseph Fraschini, and Dryjowicz' and Hess' statements to Villamaino. This frustration was sometimes bitter, as in Curtis' remarks to Fraschini, or accusatory, as in Dryjowicz' statement to Villamaino, but I cannot find in Curtis' statement to Reynolds on August 24 a threat to withhold benefits if Reynolds or the Union did not withdraw the objections, or a promise of benefits if he or it did. Respondent's attitude is best summed up by Hess' remarks to Villamaino. At a meeting on August 27 Villamaino reported that Hess asked him what he thought he could accomplish by filing objections, then, after some discussion, concluded by saying that he "was surprised that Zero East had no job descriptions or classifications and that he wanted to do these things and if the election had objections pending then the only thing that Zero could do would be to do what they did normally like a nine-month review[26]

[25] Villamaino, who was the principal in-shop union organizer, told Ron Hess on August 27 that it had been agreed between the Union and the employees that the matter of the election would be pursued "to the very end."

[26] This reference is to periodic employee performance reviews.

and nothing more." This statement appears to me to be in accordance with the law applicable to this type of situation. *KDEN Broadcasting Company*, 225 NLRB 25 (1976).

For these reasons I do not find a violation of Section 8(a)(1) in Curtis' statements to Reynolds concerning the objections.

For the same reasons I find no violation in Curtis' remarks to Joseph Fraschini on August 27 to the effect that Hess had a lot of good ideas and plans for the Company, and that "you guys are really screwing things up—like $50 per month."

7. John Dryjowicz[27]

Dryjowicz was a production manager in Department 1300 during the period material to the facts in these cases.

Daniel Dennis, Jr., testified that in mid-June he overheard part of a conversation between Dryjowicz and an employee named Dudek in which Dryjowicz told Dudek that if the Union was voted in all the employees would lose their benefits. Dryjowicz was called as a witness and denied that this conversation took place. As I noted above, I found Dennis to be a credible witness and I find this remark by Dryjowicz to constitute a violation of Section 8(a)(1) of the Act.[28]

On June 21[29] Villamaino testified that he spoke to Dryjowicz, telling him that some people were under the impression that if the Union was voted in and certified they would start from scratch at the table. Dryjowicz said he thought that was so but he did not think Zero would do that. Villamaino asked if Dryjowicz would check it for him. Later that day Dryjowicz told Villamaino that he had checked with someone in management and that person had said that they thought you had to start from scratch. Dryjowicz suggested that Villamaino check with the Labor Board, but Villamaino asked instead to see Mr. Hess.

Dryjowicz set up a meeting and Villamaino, Greg Frew, and Yvonne McClusky met with Hess in his office. Hess informed them that they did not lose benefits, but did point out that if there was a strike they could lose everything including their paychecks, and they would not have any benefits.

These facts certainly do not warrant a finding that Dryjowicz told employees they would start from scratch if the Union came in. At most he may have attempted to leave Villamaino with that impression, but his suggestion that Villamaino call the Labor Board would indicate that Dryjowicz was not really attempting to mislead the employees. I find no violation in this incident.

Dryjowicz became involved in several incidents with Robert Gauthier. As previously noted, Gauthier was a group leader who showed his support of the Union by wearing large numbers of union buttons while at work. From this, and from my observation of him while he was testifying, I find that he fancied himself a humorist. Accordingly, I might be inclined to write off his allegations concerning Dryjowicz as exaggerated were it not for the fact that Dryjowicz himself testified that he could not recall any conversations with Gauthier in the preelection period from May to August. This indicates to me either an abysmally poor memory, or a conscious attempt to avoid questions about those conversations. In either case, this leads me to credit the substance of Gauthier's testimony, which is, in the main, logical, if uncorroborated, and consistent with other words and actions of Dryjowicz.

Early in August Gauthier testified that he had a conversation with Dryjowicz, who was with Jack Frickel, just outside the grinding area. Dryjowicz said that if the Union got in "the fringe benefits and everything would stop and the Company would move to Burbank, California." I find this to be a violation of Section 8(a)(1).[30]

Some time later Dryjowicz approached Gauthier and told him that because of his position as a group leader Dryjowicz would "appreciate it if he removed the Union buttons because he would more or less be influencing other employees." Gauthier agreed and removed the buttons.

On August 23, the day of the election, Gauthier came in to work wearing an IUE T-shirt. Dryjowicz observed this and told Gauthier that he would appreciate his removing the T-shirt before going up to vote. Dryjowicz added that wearing the T-shirt could stop Gauthier from working up to a leadman position and on into a management position. Gauthier replied that it should not make any difference what he was wearing since that did not say which way he was going to vote. Dryjowicz then asked if Gauthier would wear a Zero button if he gave one to him. Gauthier agreed, and Dryjowicz took one from his own clothing and gave it to Gauthier. Gauthier pinned the Zero button on the union T-shirt then walked over to the grinding area and removed it.

I would not view these exchanges as really serious, particularly in view of Gauthier's habit of decking himself out like a costermonger while at work, if it were not for the implied threat that his wearing of the button and the T-shirt would influence his prospects for promotion. The facts show that this did impress Gauthier. He removed the buttons one time, and while he did not take off the T-shirt—he had no other shirt to wear—he did accept a Zero button from Dryjowicz on the second occasion. The facts further show that he was promoted, later, to leadman. Thus, I find in Dryjowicz' suggestions

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[27] Dryjowicz' name is misspelled in a number of different ways in the record, but there is no question who is being referred to.

[28] The allegation of the complaint covering this incident appears to be Sec. 8(a)(1). The dates are off, but I will allow the General Counsel's motion to conform the pleadings to the proof. The matter was, in any event, fully litigated.

[29] It is evident that Villamaino was in error about this date. Hess did not report to Zero East until July 2, and he testified that this meeting took place on July 17. I find that Hess is correct on the date, but there is no dispute on the substance of the meeting. I consider this to indicate some lack in Villamaino's memory, but I do not consider this sufficient to disregard the substance of his testimony. He impressed me as an alert, candid, and truthful witness and some impairment in memory does not render him any less credible.

[30] This specific conversation is not alleged in the complaint. Indeed, the only reference to a move to Burbank is in an allegation of the complaint attributed to Pat Hayes. However, I have granted the General Counsel's motion to conform the pleadings to the proof, and this incident was fully litigated.

an element of restraint and coercion toward Gauthier's right to engage in activities protected by the Act in violation of Section 8(a)(1) thereof.

About August 20 employee Yves Constant had been discharged and was on his way to the personnel office to discuss the matter. He passed Dryjowicz, and told him that if the Union came in he would be "coming right back" and that he was "not going to do the same lousy job." Dryjowicz told Constant "Don't hold your breath, there's not going to be a union in this place."

Even assuming in this instance that Constant correctly related this incident, I find no violation in Dryjowicz' comment which, rather, was the expression of an opinion protected by Section 8(c) of the Act, and containing no threat of reprisal or promise of benefit.

On August 24, Dryjowicz called Villamaino, who was on vacation but at home, and asked him to come in to have a meeting with General Manager Hess. In the course of this call Dryjowicz said that he knew Villamaino had tried to "make things better here" but that if objections were filed everything was going to be frozen and a lot of things Zero wanted to do to help the employees could not be done. I have already found that this conversation did not violate Section 8(a)(1) of the Act.[31]

8. Jack Frickel

If, as I have found, the benefit package granted to Zero West employees after their union election in June was the *leitmotif* of the Company's campaign at Zero East, Jack Frickel served as the principal orchestrator of that theme. Frickel did not testify in these cases, but was identified as a supervisor in the business machine department at Zero West. Ron Hess testified, rather hesitantly, and certainly incredibly, that he had asked for some help in the business machine fabrication department at Zero East and Hess' boss recommended that Frickel was responsible for those areas at Zero West and he would be the best one to handle those problems. Thus, Frickel was sent from Zero West, and arrived at the Zero East plant on July 25. It became evident, after his conversations with a number of employees, that while Frickel was interested in and knowledgeable about production methods his primary assignment at Zero East was to spread the word about the benefits the Zero West employees received after they had voted against unionization. In addition to this, Frickel also solicited grievances from employees, in one instance effecting the order of equipment, and in another settling an employee's longstanding complaint about incorrect seniority placement.

At some time after his arrival in July[32] Frickel approached Waite and began by asking what the problems were at Zero. Waite told him they included wages, benefits, bad management, and the pension plan. Frickel then asked what the Union was going to do about it, and Waite replied that he did not know. Waite, of course, had heard about the election at Zero West and it was this that led to his question to Frickel about what the benefits were in the California plant. Frickel replied that the people at the California plant got a 50-cent across-the-board wage increase, and that the benefit package went from $8 to $2 and some cents. Frickel added that he had an open hand to give more raises if necessary.

After this exchange, they went on to discuss the pension plan. Frickel said the plan was not good for people who had been there for 20 years. Waite also asked Frickel about other companies in the area paying more than Zero. Frickel left for about an hour and returned with a contract from another employer which showed employees making more than they did at Zero.

Respondent, besides arguing that Waite was not a credible witness because of his misplacing the date of this conversation, further urges that I find no violation here because Waite asked Frickel about the benefits at Zero West and Frickel answered honestly and in the protected exercise of free speech under Section 8(c) of the Act. This might be true if Frickel's remarks to Waite were viewed in isolation, apart from the other facts in this case. But if one looks at the whole conversation, it may be seen that Frickel sought out Waite, and began the conversation, not by talking about business machine manufacturing problems, but by asking what the "problems" were. What those problems were, and where Frickel's interest lay, was made clear by Waite's reply and the ensuing conversation. Obviously Waite's interest in the west coast benefits must have been quickened by Wood's June letter, and by other shop talk concerning what had happened at Zero West. Frickel, coming from Zero West, would be a natural target for questions concerning conditions there from employees seeking authoritive answers. That, as all the evidence shows, is precisely why Frickel was brought to Zero East on July 25, and, of course, why he left Zero East on August 24.

Thus I do not find that it makes any difference whether Frickel was asked about Zero West benefits or whether he volunteered the information. I find that his recitation of those benefits to Waite and to others was part and parcel of Respondent's main thrust against the Union, and thereby violative of Section 8(a)(1) of the Act.[33]

Gary Villamaino testified that he was introduced to Frickel about the third week in July by John Dryjowicz. Dryjowicz told Villamaino that Frickel was a foreman for Zero West and he was here to learn their work habits and to study aluminum welding. A few days later Villamaino was talking with Allen Waite and Frickel, when Waite said to Frickel that Villamaino was the person that he should talk to about unions. Villamaino turned to Frickel and said that everyone at the plant knew why Frickel was there, to break their union. Frickel denied this, but Villamaino continued by saying

[31] See discussion above in sec. III, C, 6.

[32] The complaint placed this incident in the second week of July and employee Allen Waite placed it in the first week of July. Obviously both are wrong but I will not for those reasons dismiss the allegations of the complaint, or disregard Waite's testimony. I found him to be a remarkably open and candid witness, and I will not disregard his testimony because of a chronological error.

[33] The fact that Frickel criticized the company pension plan, or pointed out to Waite that employees at another company in the Zero East area were higher paid does not require a different conclusion. There is no indication in this record that Frickel was dishonest, or misrepresented any facts beyond the real purpose of his presence, and he even admitted that to Villamaino.

that other employees told him that all Jack Frickel was talking about was the Union, and not about aluminum welding or anything else. Villamaino asked Frickel why he could not be on the level with them. Frickel then admitted that he was there for two reasons, to learn about work habits, and to try to understand what was motivating the union campaign. Villamaino then walked away.

From this credible and undenied evidence it is apparent that the explanation given by Ron Hess for Frickel's presence at Zero East, that he was there to advise on problems in business machine fabrication, is itself a fabrication.

On that same day Frickel came up to Villamaino and told him that Zero was opposed to unions, had a long history of not dealing with unions, and wanted to maintain that situation. Frickel added that if the Union were to win the election at Zero East, the Company would make it so difficult at the bargaining table, and take up so much time in bargaining, that the employees would lose faith in the Union and probably would not support it.

Certainly, part of this statement is protected free speech. The Company is entitled to oppose unionization of its employees. But I regard that portion of Frickel's remarks claiming that the Company would delay and make it difficult at the bargaining table to the extent that the employees would become discouraged with the Union as going beyond the protection of Section 8(c). It can hardly be described as "innocuous." I find that this constituted a clear threat made by an admitted supervisor and agent of Respondent, to the Union's chief adherent, that the employees' efforts to unionize, even if successful, would ultimately be futile because of conscious acts by Respondent. I find this to be a violation of Section 8(a)(1).

In the first week of August Villamaino reported on another conversation he had with Frickel in which Frickel told him that after the union was defeated at Zero West the Company gave its employees a 50-cent across-the-board increase, a reduction in insurance premiums, and that they were going to get a $50-a-month fuel allotment. I do not think this further manifestation of the central point of Respondent's campaign against the Union needs further discussion. I find this to be an additional violation of Section 8(a)(1).

On the afternoon of August 16, William Ramsey, a spray painter, testified that he had a conversation with Frickel. At first the two of them were alone and Ramsey asked about free insurance. Frickel said that Zero would not consider that, but then asked Ramsey what he thought he was going to get out of the Union. They then discussed negotiations and Hess' "open door" policy. Frickel moved on to his personal philosophy concerning unions. He said he did not believe in negotiating as a group, that was like communism or socialism. Frickel preferred the capitalist system which was the American way, and he did not want to lose his right or his voice as an individual. He then went on to inform Ramsey of the 50-cent across-the-board increase and the reduction of insurance premiums at Zero West.

At this point Frickel and Ramsey were joined by two other employees, John Diezer and Jim Dupont. The newcomers started asking questions and Frickel went over the same subjects. Frickel then proceeded to tell them that as night-shift employees they would lose the 50-cent differential they received on the night shift because if the Union got in the day-shift employees would oppose this differential. He then told the employees that at Zero West within 5 days after the union was defeated the employees got 50 cents across-the-board and better insurance. There was further discussion about a raise in wages if the Union got in and Frickel said that if that were so Zero would be unable to compete, their prices would go up, they would not be competitive, and that they would end up at some point having to move some or all of the line down to Florida.

They then discussed paint systems, and the employees pointed out their need for additional parts and equipment. A week or 10 days later Dennis Morin, a supervisor at that time, came to Ramsey and told him that some of the equipment that had been mentioned to Frickel had been ordered. In the meantime the conversation continued. Some one said "the hell with California" and Frickel answered that "one on one" he would promise anything and if they tried to hold him to it and took him to court, he would "lie through his eye teeth," but with three people there he was not going to say anything or promise them anything.

This summary is based on Ramsey's credible testimony as corroborated by Dupont. The General Counsel has made this conversation the subject of five separate instances of alleged violation of Section 8(a)(1). I can really only find one. I find that the repetition of the California benefits, only 5 days after the employees there had rejected the union, constituted another violation of Section 8(a)(1) as a continuation of the same theme and pattern.

The other alleged violations do not seem to me to be established. The talk about the loss of the night-shift differential is really too speculative on which to base a finding of a violation of law. Similarly, the alleged threat to move the plant came out in Ramsey's testimony to be merely guesswork, to which Frickel is entitled. The paint spray guns, I suppose, are a condition of employment, but there is no indication in the record that the ordering of new spray guns was directly attributable to Jack Frickel. Finally, Frickel's statement that he would promise anything "one on one" does not seem to me to be anything more than an emphasis to what he had been telling them, with no implication of a threat or a promise. The whole record indicates that Frickel was a pretty cagey individual. Either through natural discretion or careful instruction he made very few slips other than his constant hammering on the Zero West experience. Looking at all the facts related by Ramsey and Dupont, I find no violations in addition to that one based on the Zero West portion of the conversation.

Sometime in August, Frickel and Hess addressed a meeting of Hydro department employees. As is noted in the evidence a series of these meetings were called by Hess, ostensibly to solicit questions and complaints from employees. This particular meeting of Hydro employees

was the subject of testimony from Roger Pikul,[34] a setup man, who said that Hess began the meeting by admitting that there was a morale problem there, and then opened the meeting to questions. Hess also asked to hear some of the employees' complaints. Naturally, someone asked a question as to how pay and benefits there compared to Zero West. Obligingly, Hess referred the question. Frickel answered that wages and benefits at Zero West were a little higher because of the higher cost of living. Then Hess and Frickel were asked about wages and benefits going up at Zero West. Frickel answered, saying that everybody at Zero West had received a $50-per-month fuel allotment, the insurance premium was cut by about $4, and wages were increased by 50 cents an hour. In addition they were going through job reclassification and review and in most cases that would probably result in another wage increase. This happened after the union was voted out.

This is a further example of the pattern I have found to be established here. There is no question that the meetings themselves were proper and lawful, and that Frickel's replies were truthful. It is the inevitability of the questions about Zero West and the constantly repeated connection made by Frickel between the increases and the rejection of the union which made the statement here unlawful. I find this to be a further violation of Section 8(a)(1) of the Act.

In a different but related matter, Frickel became involved in the settlement of a longstanding complaint by an employee named Raymond Beaulieu. The latter was a 14-year employee who, after he had worked for the Company for about a year, went into the army. On his return from the service he did not come back to Zero right away, the evidence indicates that he may have turned down one offer of reemployment, but he did come back within the time limits set by the law applicable to reemployment of veterans. In any event and for whatever reason, Beaulieu apparently was not credited with his full seniority, and over the years lost vacation benefits on that account. Beaulieu himself testified that he had been bringing the matter up with management, and had spoken to four or five personnel managers, to no avail.

At a meeting, late in July, Beaulieu mentioned this matter to Frickel. Frickel told him to see the personnel manager and that he, Frickel, would see the general manager. Beaulieu spoke to Personnel Manager Karen Mankus, and she told him, in turn, that she would see the general manager. There is no evidence that Frickel talked to General Manager Hess. Hess testified that he had discussed the case with Mankus and she testified that Frickel had brought it to her attention. About August 20, Beaulieu was given a check for $942.68 representing the value of the vacation time he had lost because of the incorrect computation of his seniority.

While I did not find Mankus to be a particularly candid witness, I do find that she was truthful in this matter, even admitting that she had heard Beaulieu was involved with the Union. This incident affirms to some extent the testimony of Pikul that complaints were solicited at the approximately 20 to 25 meetings called by Hess, and featuring Frickel, during the course of the Company's campaign. It further indicates Respondent's determination to act on those complaints, in this case to award a long-sought benefit to a rumored union supporter, only a few days before the election. I find this action to be an award of benefits, intended and designed to influence the vote of Beaulieu at least, and to be a violation of Section 8(a)(1).

About 2 weeks before the election on August 23, Roberta Parker, an assembler on the second shift, reported on a conversation with Frickel and Pat Hayes. After general introductions Frickel brought up the Union and asked Parker what she thought of it. Parker replied that she thought it would be a good idea. Hayes then asked her if there were any problems in her work area. She mentioned a few and Hayes said that they were in the process of making changes, that there was new management and that they had to have time to make changes. Frickel then mentioned the changes made at Zero West after the union there was defeated. They went on then to more personal matters. Frickel asked her if she had ever worked in the shop before. She said she had not, that this was just a stopping point on the way for her. Frickel then mentioned the fact that Parker's brother was a leadman there and that it was quite possible for her to become a lead person, and to go into management.

I had some problems with Parker's credibility. Her version of an incident alleging that Hess said that anyone who posted union signs or literature would be fired I find to be wholly untrue. Based on that, and her demeanor, I do not credit Parker's story and do not find any violations in this alleged conversation.

A final allegation involving Frickel, added at the hearing, will be considered below in connection with the denial of Villamaino's request to change his vacation.

9. Karen Mankus

On August 29 or 30, William Reynolds and Allen Curtis had an argument in the plant which arose when Curtis handed Reynolds a copy of a notice from Hess notifying employees of the filing of objections to the election by the Union. Reynolds, it may be recalled, was perceived by both management and employees as being responsible for the decision, and he reacted loudly and abusively toward Curtis.

Sometime later in the afternoon Karen Mankus, the Company's personnel representative, came up to Reynolds at his work station. She said she had heard about the argument and told him that it was not right and, if he had done it on working time, he would have been discharged. She also said that "everyone" knew he had made the speech that caused the objections to be filed. Reynolds by this time had calmed down. He agreed with Mankus that he should not have spoken to Curtis in that way, but he had already been approached by six or seven employees and accused of being the cause of "their promises from the Company being held up." Mankus replied that he was under pressure, Curtis was under pressure, she was under pressure, and that the Company in-

[34] Spelled Pickel in the record.

tended to keep up the pressure until the objections to the election were withdrawn.

The findings in this conversation are based on the credible testimony of Reynolds. Mankus was an evasive witness with a habit of hedging and qualifying her answers which I did not find compatible with candor.

However, I do not find that either of the two violations alleged to derive from this conversation can be justified. It is clear from the evidence that "everyone" did know about Reynolds' speech on August 23, and the fact that Mankus reminded him of that did not give rise to an impression of surveillance. Further, the statement that the Company was going to keep up pressure until the objections were withdrawn is not meaningful unless those unnamed "pressures" are specified. In this case Reynolds' blowup in the cafeteria was the result of tensions he felt from his contacts with other employees, not management, and the record is devoid of any other pressures exerted by management on employees. Thus, I do not find any violations of law in Mankus' conversation with Reynolds on August 30.

10. Ronald L. Hess

Hess reported for duty as general manager of Zero East on July 2. Thereafter he returned to LaGrange, North Carolina, to wind up his affairs there, returning to Monson and the plant on July 16. Hess first learned about the union organizing campaign when he reported on July 2. He testified that he had not heard about it before, and that he did not inquire of his predecessor, Bill Wood, about who was involved. As Hess put it, he did not see that it made any difference who was involved in the union campaign. It is hard to believe, in view of the Company's vigorous nonunion posture, that Hess was given no intimation by upper management in California of what awaited him at Zero East, and that he cared so little for the identities of the union activists.

In any event, Hess did not have long to wait to find out who some of the union adherents were. He testified about a meeting with Villamaino, Frew, and McClosky on July 17 as described above in the section of this Decision dealing with Dryjowicz.

On July 24 a former employee named Frank Grabowski came to Hess' office looking for a job. From his testimony it appears that Grabowski did not consider himself an ordinary applicant. He told Hess that if he came back to Respondent he "wanted a few things straightened out in maintenance" and that he did not want just a job like he had before. He wanted a preventive maintenance program, he wanted to go to schools and seminars, and he wanted more money.

At this point Hess asked Grabowski his opinion on unions. Grabowski mentioned an unfortunate experience with a particular local, but stated that he agreed with what the people were doing at Zero because the "way they are treated by management and supervision is unbelievable at times." Grawbowski said that he was not asked to fill out an application and was never called back.

Hess placed the conversation on July 31, and indicated that he had asked Grabowski if he would be interested in a job as a supervisor. Hess denied that he asked Grabowski his opinion of unions, but did admit that the latter had mentioned the union local where he had trouble. Hess finally said that he called Grabowski a few days later and said there were no openings, but to come by and fill out an application.

Grabowski's story is suspicious in that an applicant for employment does not usually tell his prospective employer what is going to be done in such blunt terms, but I do believe that Hess asked his opinion of unions. How else would the subject of the other union local come up in the conversation? In that sense Grawbowski's version has more logic to it. Hess is an able and articulate person but his testimony was vague and evasive. I do not credit much of it on substantive issues although I found him better on dates and times than employee witnesses.

I thus find that by Hess' interrogation of Grabowski about his feelings about unions, Respondent has violated Section 8(a)(1) of the Act.

At the meeting in the Hydro department in late July,[35] Roger Pikul testified that a question came up as to why the wage scales in the Hydro department had fallen behind the sheet metal and maintenance departments. Hess replied that he would look into it, and that he saw no reason why they could not review job classifications and post them on bulletin boards.

Hess testified that he introduced himself at this meeting, and did discuss the fact that his previous employer had published job descriptions and posted pay grades, but he denied that he said he was going to institute this practice at Respondent.

In this instance, I cannot find, either express or implied, a promise of benefit. Even crediting Pikul's testimony it seems that Hess was asked one question, about the difference in wage rates between several departments, and he answered another, dealing with the posting of job classifications. Then there seems to me to be no connection which would permit me to conclude that Hess was soliciting grievances and promising to adjust or remedy them.

On August 6 or 13, Michael Daunis, a production control coordinator, testified that he attended a meeting at which Hess announced that Zero West employees had received a 50-cent wage increase and a $50 fuel adjustment. According to Daunis, Hess also mentioned that the Company had a nonunion policy. Daunis could not recall whether there was any mention of the election at Zero West.

I do not credit Daunis' story. In all of the other testimony on these meetings there is agreement that it was Jack Frickel who did the talking about Zero West, and all questions about the situation out there were referred by Hess to Frickel. In the absence, then, of any corroboration I find Daunis' testimony to be illogical and not in accord with other credible testimony.

Both Gary Villamaino and Hess testified about a meeting between them on August 27. As noted above in the section of this Decision dealing with Dryjowicz, Villamaino was contacted at home on August 24 and asked to come in to meet with Hess on the 27th. Hess began the

[35] See discussion of this meeting above in relation to Jack Frickel.

meeting by asking what Villamaino thought he could accomplish by filing objections. Villamaino answered that he was not sure, but that maybe they could get a bargaining order issued by the court. Hess said that he could count the number of bargaining orders issued by the court on one hand. Villamaino replied that Hess probably was right but that he did not know. Hess then continued that he was surprised that Zero East had no job descriptions or classifications, and he wanted to do those things, but if the Union had objections pending then the only things Zero could do were the things they normally did. Villamaino then told Hess that he supported the objections, and that the people and the Union had agreed that this matter would go all the way.

I cannot find any violation of the law in this conversation which, like so much of this campaign, was conducted on a reasonable and civilized level, and contained no hint of coercion or reprisal. Certainly Hess was disappointed by the apparent desire of the Union to carry matters further after the vote was in, but I can find no threat in his inquiry as to the Union's intentions, or a promise in Hess' remark that he would like to institute job descriptions and classifications. The mere preparation of job descriptions or establishment of wage and salary classifications does not, in my experience, mean increases, or decreases, in pay, and the establishment of a system does not mean that any change at all will be made. Thus, I do not find any violation of Section 8(a)(1) of the Act in this conversation.

On August 27 or 28, Allen Waite got into a discussion with Dryjowicz during which Waite said that everyone in management was a liar and Dryjowicz replied that Waite was the "biggest pain" in the shop and he had the least to complain about. The evidence is not too clear as to what they were arguing about, but I infer from Waite's testimony that it concerned the Zero West benefits.

Hess heard about this, and a couple of hours later he came down to where Waite was working. Waite and Hess then discussed the California benefits. Waite said he had heard from Jack Frickel that the Zero West employees had received 50 cents across-the-board, a reduction from $8 to $2 in insurance, and a $50 fuel adjustment. Hess said that was not so, that they had received a 50-cent increase in the hiring rate, a reduction of 50 percent in insurance, and the $50 fuel adjustment. There was some more discussion and Hess asked Waite to get on the intercom in the plant and admit that he had lied when he said the Company had misrepresented the Zero West benefits. Waite refused.

The evidence in this case is overwhelming on the Company's assertions as to what the Zero West employees received. Despite Hess' denials, a number of witnesses testified credibly that Frickel reiterated time and time again that the Zero West people received 50 cents an hour, a reduction in insurance payments from $8 to $2 and some change, and a $50 fuel allotment. There was no evidence that he misrepresented those benefits. Therefore, I can only suspect that the benefits were in fact somewhat lower, in line with what Hess told Waite on the 27th or 28th, and that, once the election was over, there was no need to keep up the pretense. This would be a logical explanation, but it is only a suspicion.

Looking at this conversation again, I cannot find any threat or coercion in Hess' remarks, and I find no violation of law in this matter.

About August 20, Robert Gauthier, as was his habit, was at work bedecked with union buttons. Pat Hayes came up to Gauthier and told him he ought to go up and see Hess because of the display of buttons. Gauthier went up to Hess' office and Hess told him that he did not know what he was doing with all those buttons on because Hess had told him there were going to be changes. Gauthier said that all he wanted to know was whether there were going to be changes. Hess said, "You can see them coming on." Gauthier said "fine" and removed the buttons.

Again I can find no violation here. Hess did not request or order Gauthier to remove the buttons, and vague talk about "changes" does not imply any promise of benefit as far as I can see. Thus, there is no violation of Section 8(a)(1) in this conversation.

11. Brian McLaughlin

An employee named Dan Dennis, Jr., testified that in mid-June he was working on the assembly line when Brian McLaughlin, then a manager of manufacturing, came up to him and asked if he had heard anything about the Union. Dennis said that he was not interested. McLaughlin then asked if he had signed a "union contract" and Dennis replied that he had not. McLaughlin then said that he would appreciate it if Dennis would keep him informed on anything he heard about the Union.

Dennis appeared to be a credible witness and McLaughlin did not testify. I find that this interrogation, occurring at the time that it did, fits into the pattern of Respondent's antiunion activity at that time and constitutes a violation of Section 8(a)(1) of the Act. The solicitation to furnish information I likewise find to be a violation of Section 8(a)(1).

12. Chris Sobel

On August 8, Sobel approached Frank Woodman and asked him if he was a union organizer. This was not the first day the Union had passed out literature, but it may have been the first day that Woodman's name appeared on the literature as a member of the union organizing committee. Woodman answered that he was a member of the organizing committee. Sobel then said that in his opinion unions were bad and that he had been in meetings with Hess, that Hess was trying to establish wage scales, and that he, Sobel, believed Hess to be a fair person. Sobel then asked Woodman his opinion about unions. Woodman told him about financial gains, better retirement, and resolution of difficulties.

Sobel then began to talk about Woodman's potential with the Company and mentioned a special review. Woodman replied that it was a piece of paper and noth-

ing more.[36] Sobel said he could get a special review for Woodman.

I do not believe that Sobel's first question constitutes a violation of law. This conversation occurred well into the campaign, and when an employee wears a union button to work, as Woodman did, and allows his name to be used on union literature, he should be neither surprised nor coerced by a question from a supervisor as to whether he is a union organizer.

Similarly, Sobel is entitled to his opinions about unions, and his mention that Hess was trying to establish wage scales does not appear to me to imply a promise of benefit.

The discussion about the special review is different. Woodman's shortcomings as an employee will be noted further below. There is no indication in the record that his work was so proficient as to warrant a special review. Thus, while there was no expression by Sobel tying the special review to Woodman's cessation of union activity, I infer and find that it was implied in Sobel's bringing the matter up. No other reason would be logical since Woodman's work and the special review appear so spontaneously in a conversation otherwise devoted to unions. I find that by offering a special review to Woodman Respondent has violated Section 8(a)(1) of the Act.

13. Fred Goodrich[37]

Goodrich was the production control manager in charge of production control and shipping. About August 8 he was talking with Frank Woodman and pulled a union leaflet out of his pocket. The leaflet contained a statement that Respondent's supervisors were "scared" of the union organizers. Goodrich asked Woodman if he honestly believed that he, Goodrich, was afraid of Woodman. Woodman replied that he did not think that any specific supervisor was intended. Goodrich then asked whether Woodman had read the leaflet before he gave permission to use his name. Woodman answered no. Then Goodrich asked if Woodman knew how other employees felt about the Union. Woodman said that he had discussed it on a limited basis with others and he had found that they were concerned with money, insurance, retirement plans, and unfair hiring and firing practices. Then (it is not revealed how it came up) they began talking about Woodman's goals. Woodman said that he wanted to become a coordinator in the department. Goodrich said that they were on different sides of the fence on the union issue. He said Woodman would have to establish a goal, but he would have to decide, before he established his goal, whether he wanted to be a part of society or a radical. Woodman asked him to define "radical" but he would not.

Goodrich did not testify about this conversation. As with Sobel, I found the first part of the conversation to contain nothing contrary to the Act. There is nothing in Goodrich's question about whether Woodman thought he was afraid of him, or in his question about how others thought about the Union, impersonal and undefined as it was, which exceeded the bounds of free speech, in that context and at that time in the campaign. Nor do I find Goodrich's remark that he and Woodman were on opposite sides of the fence to be more than a protected statement of an opinion.

The last part of the conversation is somewhat different. However, from the evidence it appears that Woodman, rather than Goodrich, brought up the issue of his goals in the department. This is different from Woodman's conversation with Sobel where it was Sobel who brought up the question of the special review. Considering Goodrich's statement that Woodman would have to decide whether he wanted to be "part of society or a radical," this phrase could be construed as antiunion or conditioning Woodman's advancement to his conforming to a procompany, nonunion stance. It could also have been a comment on Woodman's shoulder-length hair and cavalryman's moustache, or, and this is perhaps most likely, Woodman's trouble with the police in July which had caused him to miss 3 days of work, and about which he had confided in Goodrich. In these circumstances, and in the absence of any more definite implication of an antiunion motivation by Goodrich, I cannot find a violation of Section 8(a)(1) in this conversation.

14. The July poster

Sometime in July, agents of the Company posted in the plant a large poster having on it cartoon figures. One of the figures was saying "I'm from Zero-West and we got wage increases and improved benefits without a strike—by voting no!" Other cartoon figures were complaining about strikes. I have already commented on this poster in my general discussion on the Company's campaign. There is no question but that the quoted language contains the implied promise that if the employees at Zero East vote no, they, too, will receive benefits. This I find to be a violation of Section 8(a)(1) of the Act.

D. *Incidents of Discrimination Against Employees*

1. Dennis Morin

Before his appointment as a supervisor on June 25, Dennis Morin was a rank-and-file employee in Quality Control, supervised by Fred Lesniak. As I have found, Respondent was aware of Morin's union activities on May 30 through John Sullivan's interrogation of an employee known only as Peet. Then on June 4 Lesniak told Morin that he was giving him a verbal warning for being tardy, and if the tardiness continued, further action would have to be taken.

Lesniak testified that he gave Morin the warning after he was advised by an employee named James Bonafini that Morin had been late an excessive number of times. In fact, the last time Morin was late before the warning was given was on May 21. He had also been late, if I read Respondent's attendance record correctly, on May 1 and 3, four times in April, and four times in March.

There is in this case a problem which runs through four of the six alleged instances of discrimination against employees, and that is in the definition of "excessive" ab-

[36] This remark may have been based upon the fact that Woodman had been given a special review late in June, but received no increase in pay as a result.

[37] Identified as Frank Goodrich in the complaint.

sences or tardiness. The evidence shows that the standards used at the times material here varied from supervisor to supervisor, and in fact was left up to individual supervisors by Respondent to deal with as they saw fit. Thus, Lesniak's rather imprecise definition of excessive tardiness as 3 days in a week or during a specific month is the standard which, perforce, must be used to evaluate his verbal warning to Morin.

The General Counsel argues that the timing of the warning is indicative that it was in retaliation for Morin's union activity. This circumstance is suspicious. The last time Morin was late was May 21. On May 30, as I have found, Respondent was made aware of Morin's union activity. May 31 was a holiday, and June 1, under Respondent's 4-day-week policy, was not a working day. It happened, then, that June 4 was the next working day after Respondent became aware of Morin's union activity. More directly, Lesniak testified that he was aware that Morin had been passing out union cards.

On the other hand, Lesniak, who was not, in the main, a convincing witness, was consistent in his testimony that he followed a uniform practice in giving verbal warnings, even though he knew that the normal procedure was to make a written record of those warnings. He testified that he had given warnings to other employees, including Bonafini, although he had not warned Bonafini since January 1, 1979.[38] Also, Morin testified that he had been warned sometime around the end of May about tardiness, and he was spoken to again about it when he had an interview with Bill Wood before he was promoted or June 25.

I cannot in these circumstances, particularly in view of Morin's later promotion, which in no way is connected to his union activity, raise a suspicion to the level of a violation of Section 8(a)(3) of the Act, and I find that the General Counsel has failed to establish such a violation by a preponderance of the credible evidence.

2. Anthony Fedor

Fedor did not appear to testify in this hearing. The whole fact situation with regard to him is somewhat vague. Morin testified that Fedor attended union meetings, but was not asked about the dates of those meetings. Fedor's attendance report, which was entered in evidence, shows that he was late twice in May before the 24th, and five times in April. A periodic review of his performance dated April 9 emphasized that his attendance was a problem. Then, on May 24, Fedor's supervisor[39] issued a warning for excessive tardiness and absenteeism. The warning was not given to Fedor until June 6, under circumstances which are, at best, murky. Hiersche testified that he discussed the warning with his supervisor, William Chaffin, before he made it out, but then the delivery of the warning was delayed because Chaffin was on vacation. Chaffin corroborated the fact that he was on vacation during the first week in June. I have no reason to discredit this story. Hiersche impressed me as a credible witness and I find, again, that the General Counsel has not demonstrated by a preponderance of the credible evidence that Respondent violated Section 8(a)(3) of the Act by this written warning to Anthony Fedor.

3. Yves Constant

Constant began work in April 1979 as an assembler under the supervision of John Dryjowicz and Pat Hayes. His attendance record shows that he was absent 1 day in April, 1 day in May, 2 full days and two partial days in June, and 4 days in July. As of May 24 Constant's work was reviewed by Dryjowicz, who described his work as "very good."

The extent of Constant's union connection is not clear, but he did wear a union button at work, and his name appeared as a member of the organizing committee on at least two pieces of literature distributed by the Union in August. Dryjowicz testified that he was aware of this activity.

Constant was familiar with Respondent's rule that an employee was required to call in if he or she was not going to report to work. He testified that on each occasion when he was absent he had his wife call the personnel office to tell them that he was not going to be in. This testimony, however, is not corroborated by Respondent's records, submitted in evidence by the General Counsel, for July 23 and August 16. These records, which are maintained by the personnel office, show the date, the employee's name, and the reason for the absence. The records for July 23 and August 16, when Constant was absent, do not show that he or his wife called.

It also happened that Constant was not satisfied with the pay or working conditions at Respondent. He mentioned that another employee had been hired in his department, that he had been asked to show the employee how to do the job, and that the new employee received a higher raise than did Constant. In addition Constant was unhappy with his pay. Under Respondent's 4-day, 10-hour-day system, an employee who misses a day is penalized even more than just the hours missed, through a rather complex formula. Constant did not understand this, and the combination of low pay and the new employee made him feel ill-used by Respondent. Accordingly, he began looking for another job, using for that purpose the days his wife allegedly called in to report that he was sick.

Constant was given a verbal warning on July 24, and on the 26th was given a first written warning by Dryjowicz. When Dryjowicz gave him the warning, Constant raised the matter of the other employee getting more money. Dryjowicz answered that it was due to the fact that Constant was taking too much time off. Constant argued that that had nothing to do with it because when he was there he did his job, and he could not see why the other employee got more money. At this point, Hayes came up and Constant repeated what he had said

[38] Bonafini's attendance record shows that he was late once on May 7, and three times in April. But I note also that Bonafini himself maintained the daily attendance records and would not be likely to inform Lesniak on himself as he did on Morin.

[39] Respondent denied that this person, Albert Hiersche, was a supervisor. The record shows that Hiersche constantly engages in written evaluations of employees, which evaluations are used for purposes of granting raises. Hiersche's original work is not redone by anyone. I find him to be a supervisor within the meaning of Sec. 2(11) of the Act.

to Dryjowicz. Hayes, in turn, told Constant that he did not deserve the money because he had been taking so many days off. Hayes then said that if Constant took off one more day he would be "out." Constant told him that he was not going to be scared, then he asked to see Hess.

Constant and Hess then met, but apparently it was not on July 27. Hess identified one meeting as being on the 27th, but then referred to the meeting as occurring on a Friday, which would have been the 28th. Constant identified the date as August 3, by which time he had received a second warning for being absent on July 30. In any event a meeting did occur on a Friday, and Constant discussed the same problems he had with Dryjowicz and Hayes. Hess took the same position as the other supervisors then asked if Constant was looking for another job. Constant admitted it, then Hess asked why he was taking off on Mondays when he already had Fridays off. Constant replied that Monday was a better day to look for a job. Hess then said he would make a deal with Constant. If he came in for 60 days without taking a day off he would give him a special review. Constant demurred at the length of time but agreed with the proviso that if he was sick and called in, that would not count against him. Hess agreed and told Constant he would have Karen Mankus check out the payroll problem, and that Hess would notify Hayes and Dryjowicz on Monday about the arrangement.

On that Monday, August 6, Constant had car trouble and could not get to work. He testified that he told his wife to call the plant, but he was not present when she did. In the meantime Hess had gone to Constant's department and found he was not there.

When Constant arrived at work on the 7th he was called in to a meeting with Dryjowicz, Hayes, and Hess. Hess expressed surprise that, after their talk on Friday, Constant was out on the next Monday. Constant explained about the car trouble and his wife calling. Dryjowicz then gave him what was described as a final warning and he signed it. Dryjowicz added that Constant was a good worker, and they were going to miss him, but one more day and he was out.

On August 15, Constant testified, he passed out a union leaflet. Then on August 16 he did not work. He said that his wife called the Company and told whoever answered that he did not feel good and could not make it. As I have noted, the company records do not show that any call was made on that day regarding Constant.

Constant's wife apparently went in to pick up his check that day and someone told her that he was fired. Constant himself reported for work on August 20 and was told by Dryjowicz to report to Karen Mankus in the personnel office. Mankus told him that he was terminated. He answered that he was sick and had called in. She said that they had told him that if he took one more day off he would be fired. He replied that he had called. According to Constant, Mankus then said that she knew he had called, and told him that, sick or not, he should have been there. I do not credit this last statement, relying on my observation of Constant's demeanor, the company record which shows no call, and Constant's admission on cross-examination that he never tells a supervisor that he cares about a job, whether it is true or not.

It seems to me that Respondent here dealt fairly with Constant, exhibiting considerable restraint in not effecting his discharge on August 7 when he failed to report on the next working day after his conversation with Hess. There is no indication in this record that Constant was singled out for disparate treatment, and no hint of antiunion motivation either in the warnings or in his ultimate discharge. I did not find him to be a credible witness, even though I have drawn this recitation of the facts basically from his testimony. There is no real contradiction between this testimony, in its broad outline, and that of Dryjowicz, Hayes, and Hess. The standards used to administer the discipline were Dryjowicz' own and there is no indication that they varied in this case from the less than five other employees discharged by him in the year before Constant's termination. I therefore find that the General Counsel has not established by a preponderance of the credible evidence that Constant was discharged because of his activities on behalf of the Union.

4. Frank Woodman

Woodman had worked for the Company in 1964 and 1965, then again in 1970 or 1971. He returned in December 1978 as a traffic clerk, then transferred to the job of production control expediter. His absences from work attracted the interest of his supervisors, Chris Sobel and Fred Goodrich, and at some time in May or early June Sobel spoke to him and told him that his absenteeism was getting a little bit out of hand. Woodman was absent on May 16 and 22, and June 4, 18, and 19. On June 25 he was given a written warning for an unexcused absence on June 22. This was described as a final written warning. There is no indication in the record that he had received a prior written warning, although the normal practice was for verbal warnings to be confirmed in writing.[40] Further, I note that Woodman's attendance record does not show that he was absent on June 22.

Woodman's next absence was on July 23. On that day he had not called in and Sobel reported this to Goodrich. It was the latter's policy that 5 days' absence in a year could be cause for discharge, depending on the reason. He told Sobel on July 23 to terminate Woodman. Then, on the 24th, Woodman came in and asked to speak to Goodrich privately. He told Goodrich that he was involved in a criminal action and had been unable to call Respondent on the previous day. He explained the severity of the problem and asked to be given the opportunity to stay. Goodrich weighed the matter, then told Woodman that he would give him another chance provided that any time Woodman would have to be out in connection with this criminal problem, he notify Goodrich personally. This varied the usual practice which was to call in to personnel.

Woodman called in on July 25 because he was unable to come in due to the strain he was under. On the 26th he came to work and spoke to Goodrich. Goodrich asked him how it had gone and Woodman responded that the matter had been continued and that he had

[40] Lesniak did not follow that practice, as noted above.

asked that the continuance be held on a Friday so as not to interfere with his job.

Woodman's contacts with the Union are not known until around August 1, when his name appeared on the first union leaflet. I have recounted above his conversations after that time with Sobel ard Goodrich. He did wear a union button, and his name appeared on at least one other leaflet distributed by the Union.

On August 15, Woodman was absent. He testified that he called personnel and informed them that he had injured his back. The personnel records show that he called, but on that day no reasons for absences were listed. Woodman did not, however, call Goodrich. His explanation was that he was not required to call Goodrich personally, and also that he thought Goodrich was on vacation that week. As to the second reason, August 15, 1979, was a Wednesday. Woodman had worked on Monday and Tuesday so that he would have know that Goodrich was at work that week. As to the first part of the explanation I do not believe that Woodman was unaware of his obligation to call Goodrich. The latter's testimony on the July 24 conversation was clear, logical, and credible. Goodrich gave Woodman a break, sympathizing with his problem with the law, and rescinding the decision, which had already been made,[41] to fire him. Goodrich obviously wanted to be advised, personally, of Woodman's situation, and it was not unreasonable to expect Woodman to call him personally when he was going to be absent. In my opinion, Woodman either was afraid to call Goodrich or just plain forgot.

On August 16, Woodman came in to work and was prevented from punching in by Sobel. Sobel told him to report to personnel. Woodman reported to personnel at 8 a.m. and talked there to Karen Mankus. She told him that he was terminated for absenteeism, and mentioned that he was supposed to call Goodrich. Woodman said he did not call Goodrich because he did not know that Goodrich was in or that he was supposed to call him. Mankus then paged Goodrich, who came up and verified what Mankus had said, that Woodman was required to call him when he was out.

After that Woodman complained that this was unfair and that he would get a doctor's note. She said he could go ahead and do that but she could not guarantee that it would change anything. Woodman then had his mother pick up a note from a doctor saying that Woodman was unable to work on August 15 and 16 due to a back injury. Woodman's father delivered the slip. On the following Monday Woodman called Mankus and she told him she had received the doctor's note, but had called the doctor and found out that he had not seen Woodman. Due to these circumstances the discharge stood.

In order to show disparate treatment between Woodman and other employees, the General Counsel introduced a number of attendance records of employees, as bad or worse than Woodman's. However, none of these employees worked in Goodrich's department. The attendance records for Goodrich's employees were submitted by Respondent, and those records show that Woodman's was indeed the worst record. Therefore I do not find that Woodman was singled out for discharge. I find, in view of all the facts in this matter, that Woodman's discharge was decided upon by Goodrich, in line with his own operating procedures, before there is any indication in the record that Woodman was involved with the Union. The discharge was reconsidered on Woodman's plea, but a condition was set. Woodman violated the condition and was discharged, I find, for that reason as well as his absenteeism. I find further that Woodman told Mankus, as she testified, that he had been to see a doctor. When she found out that this was not so, she declined to go to Goodrich and see if the matter could be reconsidered. I thus find no violation of Section 8(a)(3) in Woodman's discharge.

5. Allen Waite

On August 23, Waite was in his work area about 2:30 p.m. He was about a half hour ahead of his "par rate," his daily quota of finished products. Because he was ahead, he was drinking a soda and reading a magazine. He also was wearing union buttons, and a T-shirt which had on it the words "Union Organizing Committee IUE."

While he was standing there John Dryjowicz, his supervisor, came up to him and asked if he was making effective use of his time. Waite said he was, and Dryjowicz gave him a verbal warning for not making effective use of his time. Dryjowicz later that day notified personnel of this warning. Waite testified, credibly, that Dryjowicz had never spoken to him before about this, even though he had frequently talked, read, or drunk sodas when he had caught up to his par rate.

Dryjowicz testified that he had warned Waite before August 23 and that for about 3 weeks before the election Waite had been acting like this. Hess testified that the par rate was merely a guideline, and that the Company had to exceed that rate in order to be competitive and profitable.

I believe Hess' testimony, but I know that, in practice, when a standard production rate is set for hourly paid workers that standard is rarely exceeded. I do not, however, believe Dryjowicz whom I found to be evasive and less than candid. It is evident from the argument that Waite and Dryjowicz had the week after the election that their feelings toward each other were not cordial, and that the reason was Waite's support of the Union and Dryjowicz' opposition to it. In these circumstances I find this warning to be a variation from normal practice, and that it was imposed because of the union buttons and T-shirt, rather than the magazine reading and soda drinking. I find this incident to be a violation of Section 8(a)(3) of the Act.

6. Gary Villamaino

The Company's vacation schedules are made up in March of each year. Employees choose the weeks they want and the scheduling is prepared by the personnel office and reviewed by the department manager. In March 1979, Gary Villamaino picked the 2 weeks beginning August 20 and August 27. As has been seen, Villa-

[41] The decision was made before the first union leaflet was distributed, and before the conversations between Woodman and Sobel and Woodman and Goodrich described above.

maino became vitally interested in the Union and was its chief in-plant supporter. Therefore, when the election was set for August 23, Villamaino sought to change his first week of vacation from the week of the 20th of August, including the date of the election, to the week of September 3. Changes of this type apparently were fairly routine. About the third week in July, Villamaino spoke to Dryjowicz about this, explaining that he wanted 2 weeks together but that he wanted to be there for the vote. He asked repeatedly about this and finally Dryjowicz told him the vacation was going to stay as originally scheduled, that there was nothing for him to do in those 2 weeks as they had a replacement for Villamaino. Villamaino said he could do grinding or work on the paint line, as he had done these jobs before. Dryjowicz merely replied that the vacation was going to stay as it was.

Villamaino then talked to Pat Hayes and appealed Dryjowicz' decision. Hayes told him that this is the way the game is played, and that he was dealing with his adversaries. A while later Villamaino went back to Hayes and told him that he had put in 6 months of work on that campaign, and he had asked one little favor. Hayes said he would talk to Dryjowicz and they would see. Villamaino later ran into Frickel and commented to him that Respondent's open door policy did not work. Frickel answered that Villamaino was a "big boy" now, and that he was dealing with adversaries. Villamaino took his vacation as scheduled.

Pat Hayes testified that Villamaino had approached him about the vacation change, and that he told Villamaino that there was no problem in allowing him to work the first week, but that there was in the week of September 3. A temporary employee they had hired to fill in for the welders during vacation would not be there and other welders would be on vacation.[42] Hayes denied that he said anything to Villamaino about dealing with adversaries.

As I have in other instances, I credit Villamaino and I do not credit Hayes. This was a petty thing, but it is obvious from the comments of Hayes and Frickel that it was done because of Villamaino's union activity. The General Counsel has asked that I find Frickel's remark that Villamaino was a big boy now, and Hayes' that Villamaino was dealing with his adversaries, to be separate violations of Section 8(a)(1) and I so find. I find further that the denial of the vacation change is a violation of Section 8(a)(3) of the Act.

E. *The Alleged Refusal To Bargain*

1. The Union's majority

On May 30, the Union sent a letter to Respondent claiming to represent a majority and demanding recognition as the collective-bargaining representative of Respondent's employees.[43] To prove that majority the General Counsel introduced 188 authorization cards at the hearing through the testimony of a handwriting expert, Miss Elizabeth McCarthy, and one card through Gary Villamaino, who witnessed its signing. Respondent did not stipulate to Miss McCarthy's qualifications[44] and in its brief notes that she was not a member of "several significant professional groups." I note that she testified that she has an AB degree from Vassar College, a BS degree from Simmons College, and a JD degree from the New England School of Law. She studied under an accredited document examiner and an ink chemist. She said that she has been testifying during the past 40 years in the courts of Massachusetts, 37 other States, the District of Columbia, Puerto Rico, the Virgin Islands, England, Switzerland, Italy, and Hong Kong. She admitted that she is not a member of the American Society of Questioned Document Examiners, or the American Board of Forensic Document Examiners, but she is an active member of the American Academy of Forensic Experts. She admitted not having attended professional meetings in the last 3 years but explained that was due to the press of business. She had an article published in the Western Law Journal in 1979, but candidly admitted she had had it ghostwritten.

Respondent also attacked Miss McCarthy's qualifications based upon Respondent's belief that she had identified the signature of one Joseph Handzel (G.C. Exh. 131(131)) from a W–4 form executed by another person, Joan Handzel (G.C. Exh. 132(131)). Respondent's counsel have done an encyclopedic amount of research on these cards and W–4 forms. In this instance, however, they are, through no fault of their own, mistaken. In the original exhibits which have been in my possession since shortly after the hearing ended, the card of Joseph Handzel matches the W–4 form of Joseph Handzel. Obviously the copy of the W–4 form which was given to Respondent's counsel was in error, not Miss McCarthy.

Accordingly, I find that Miss McCarthy is qualified as an expert, and that her authentication of 188 signatures on authorization cards for the Union is correct. In any event I compared all of the signatures myself and had a question about only one signature.[45]

Miss McCarthy authenticated only the signatures. She did not authenticate, or even look at, the dates on the cards. Further, it appears from a careful reading of the record that only with respect to a few of the cards was the date, or approximate date, of signing made the subject of testimony.[46] Beyond this, my own examination of

[42] The vacation schedule shows an employee named Robitaille worked from the third week in July until the end of August, then was off for 2 weeks, and then on for three more beginning September 17. He was not there the week of September 3, but the schedule also shows that only one other welder was scheduled for vacation in that week.

[43] There was no question as to the composition of the unit. The parties stipulated to its composition in the representation case, and Respondent admitted in its answer that the unit was correctly alleged in the complaint.

[44] Respondent also objected in proper and timely fashion to the introduction of the cards. *Montgomery Ward & Co., Incorporated*, 253 NLRB 196 (1980).

[45] That was the card of Wilfred Casey (G.C. Exh. 131 (15)) but I note that the W–4 form (G.C. Exh. 132 (15)) had been executed on April 1, 1966. It may be that Casey's handwriting had changed over 13 years.

[46] The cards of Gary Villamaino, William Reynolds, Gregory Frew, Jean Antonovich, Robert McLean, James Dupont, Roger Pikul, and Jeffrey Delina.

the original cards revealed that, even to my untrained eye, 60 cards were dated by persons other than the signer, and, of these, 38 were in the same hand and the same pen, which was not that of one of the signers. We can gain some contraction of the time frame by noting from the NLRB Regional Office date stamps on the back. The date stamps show that 168 cards were received and stamped in the Regional Office on June 1, 1979. An additional 21 were received and stamped on July 18. However, there is no evidence as to when these cards were signed prior to being received in the Regional Office, or when they were distributed,[47] or that they were received by the Union.

Therefore, while I suspect that all of these cards were obtained during the current campaign there is no way, in view of the 60 cards not dated by the signers, 38 by one person, that I can transform that suspicion into a legal inference that the cards were not stale or outdated. Thus, I find that the General Counsel has not met the burden of proof in authenticating these cards, or establishing that the Union represented the majority of Respondent's employees on June 17, 1979, or any other time.[48] *Fort Smith Outerwear, Inc.*, 205 NLRB 592 (1973). Respondent has not unlawfully refused to bargain with the Union in violation of Section 8(a)(5).

2. The unilateral changes

It follows from the fact that Respondent had no duty to bargain with the Union that the unilateral changes in disciplinary procedures made in September 1979 were not unlawful.

IV. THE OBJECTIONS

I think it is clear from my findings of patterns of unfair labor practices in this case that the Company seriously interfered with the election process. At the beginning of the campaign, from May 30 to the middle of June, while Bill Wood was still general manager, I found a pattern of interrogation and giving the impression of surveillance. From June 20 on, and intensifying after the arrival of Jack Frickel from California in July, I found a constant and unending pattern of implanting in the minds of employees the promise that they would receive the same benefits employees at Zero West received, once they had voted down the Union. Accordingly, I recommend to the Board that the election be set aside and a new election ordered.

V. THE REMEDY

Having found that Respondent has engaged in unfair labor practices in violation of Section 8(a)(1) and (3) of the Act, I shall recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Having found that Respondent has published, maintained, and discriminatorily enforced an invalid no-solicitation rule, I shall recommend that such rule be immediately rescinded; and having found that Respondent unlawfully issued a warning to Allen Waite, I shall recommend that the warning be removed from his personnel file.

Counsel for the Union urges that I award, as a part of the remedy, the Union's and the General Counsel's legal fees, and the excess organizing costs it incurred after June 17, 1979, citing *J. P. Stevens & Company, Inc.*, 247 NLRB 420 (1980), and *Wellman Industries, Inc.*, 248 NLRB 325 (1980). As may be seen from this Decision, I did not find Respondent's defenses to be insubstantial or "occasioned by a reasonably debatable point of view." Accordingly I will not order Respondent to reimburse the Union for its reasonable litigation costs, or excess expenses in organizing, or the General Counsel for his reasonable litigation costs. *Teckwal Corp.*, 253 NLRB 187 (1980).

CONCLUSIONS OF LAW

1. Zero Corporation, Zero East Division, is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. International Union of Electrical, Radio and Machine Workers, AFL-CIO-CLC, is a labor organization within the meaning of Section 2(5) of the Act.

3. By publishing, maintaining, and enforcing in a discriminatory manner an unlawful no-solicitation rule, Respondent has violated Section 8(a)(1) of the Act.

4. By coercively interrogating employees in May and June 1979, Respondent has violated Section 8(a)(1) of the Act.

5. By giving employees the impression that their Union activities were under surveillance, Respondent has violated Section 8(a)(1) of the Act.

6. By promising, in writing and orally, that a vote against the Union by employees would result in pay raises and other benefits, Respondent has violated Section 8(a)(1) of the Act.

7. By promising employees special reviews, which likely would result in their financial gain, or promotions, in exchange for their dropping support for the Union, Respondent has violated Section 8(a)(1) of the Act.

8. By threatening to close the plant, or move its operations to Florida, Respondent has violated Section 8(a)(1) of the Act.

9. By threatening that employees would lose all their benefits if the Union was voted in, Respondent has violated Section 8(a)(1) of the Act.

10. By soliciting grievances from employees and by granting benefits as a result during the union campaign, Respondent has violated Section 8(a)(1) of the Act.

11. By threatening that if the Union was voted in it would bargain from scratch, Respondent has violated Section 8(a)(1) of the Act.

12. By giving Allen Waite a written warning, Respondent has violated Section 8(a)(3) and (1) of the Act.

13. By denying Gary Villamaino the privilege of changing his vacation in August 1979, Respondent has violated Section 8(a)(3) and (1) of the Act.

[47] Other than the testimony of Morin and Villamaino that they had cards in the plant in May and June.

[48] If I accepted the dates on the cards as representing the actual date they were signed, 173 cards were signed by May 30, the date of the demand for recognition by the Union.

14. Respondent has not violated the law in any other manner.

[Recommended Order omitted from publication.]